Office-Supreme Court, U.S.
FILED
JAN 11 1983
ALEXANDER L. STEVAS,
CLERK

NO. 81-2386

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

PHILIP DEL COSTELLO,

Petitioner

v.

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

Respondent

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI JUNE 29, 1982
CERTIORARI GRANTED NOVEMBER 29, 1982

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RECORD ON APPEAL

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 81-2086

PHILIP DEL COSTELLO,

Appellant

v.

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, AND
WAREHOUSEMEN AND HELPERS OF
AMERICA, AND LOCAL 557,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF
AMERICA, and ANCHOR MOTOR
FREIGHT, INC.,

Appellees

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, AT BALTIMORE

CIVIL

RECORD ON APPEAL FILED:

VOLUME I, II AND III

Date 1978	NR	Proceedings VOL.I
Mar.16	(1)	Complaint, Exhibits 1 through 5 and Prayer for Jury Trial.
Apr.10	(6)	ANSWER of Defendant, Freight Drivers and Helpers Local 557.
" "	(7)	Motion of Defendant, Freight Drivers and Helpers Local 557 to Strike Prayer for Jury Trial; Memorandum; and Attachments. (c/s)
" 21	(9)	ANSWER of Defendant, Anchor Motor Freight, Inc.
May 1	(10)	Response of Plaintiff to Motion of Defendant, Freight Drivers and Helpers Local 557 to Strike Prayer for Jury Trial. (c/s)
" 3	(12)	Motion of Defendant, Anchor Motor Freight, Inc., to Strike Plaintiff's Prayer for Jury Trial; and Memorandum. (c/s)
" 11	(13)	Memorandum of Plaintiff in support of its response to Motion of Defendant, Freight Drivers and Helpers, Local 557, to strike Prayer for Jury Trial. (c/s)
" 17	(14)	Response of Plaintiff to Motion of Defendant, Anchor Motor Freight, Inc., to Strike Plaintiff's Prayer for Jury Trial; Memorandum; and Attachment. (c/s)

Continued on Page 2

Civil Docket Continuation Sheet

Plaintiff	Defendant	J
PHILIP DEL COSTELLO	INTERNATIONAL BROTHERHOOD OF TEAMSTERS,etc., et al.	Dkt. H-78-436 Page 2 of ___ Pages

Date 1978	NR	PROCEEDINGS
Aug. 24	(15)	ANSWER of Defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.
" 24	(19)	Memorandum and Order (Harvey, J.), "DENYING" Motions of Defendants, Anchor Motor Freight, Inc., and Local 557 to Strike Plaintiff's Request for Jury Trial. (c/m Judge)
Sept. 12	(20)	Answers of Defendant, Anchor Motor Freight, Inc., to Interrogatories Propounded by Plaintiff; and Exhibit A. (1 c/s)
" 13	(21)	Answers of Defendant Local 557 to Interrogatories Propounded by Plaintiff.
Nov. 28	(22)	Motion of Defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America for Summary Judgment and Attorney's Fees; Affidavit and Exhibit A; Affidavit and Exhibit A; Affidavit in Support of Award of Attorneys' Fees and Exhibit B; and Memorandum and Exhibit C. (c/s)

Continued on Page 3.

Civil Docket Continuation Sheet

Plaintiff	Defendant	J
PHILIP DEL COSTELLO	INTERNATIONAL BROTHERHOOD OF TEAMSTERS, etc., et al.	Dkt. H-78-436 Page 3 of ___ Pages

Date			PROCEEDINGS
1980	NR	VOL. II	
Nov.	19	(30)	Motion of Defendant, Anchor Motor Freight, Inc., for Summary Judgment Brief, Affidavits of Richard O'Connell, Curtis Aiken, and Exhibits A thru E. (c/s)
"	19	(32)	Motion of Defendant, Freight Drivers and Helpers Local 557 for Summary Judgment, Statement of Facts, Memorandum and attachments. (c/s)
Dec.	26	(32)	Response of Plaintiff to Motion of Defendants for Summary Judgment, Memorandum and attachments.
1981			
Jan.	5	--	Letter (copy) from Shirley B. Jones to counsel of record setteing (sic) hearing on pending motions for March 6, 1981, at 9:15 a.m.
"	20	(36)	Response to Defendant, Freight Drivers and Helpers Local 557 to reply of Plaintiff to Motion of Defendant, Freight Drivers and Helpers Local 557, for Summary Judgment, and attachments.

Continued on Page 4.

v

Civil Docket Continuation Sheet

Plaintiff	Defendant	J
PHILIP DEL COSTELLO	INTERNATIONAL BROTHERHOOD OF TEAMSTERS, etc., et al.	Dkt. H-78-436 Page 4 of ___ Pages

Date 1981	NR	PROCEEDINGS
Feb. 25	(37)	Response of Plaintiff to reply of Defendants to Plaintiff's response to Motion of Defendant, Freight Drivers and Helpers Local 557, for Summary Judgment. (c/s)
Mar. 6	--	Hearing on Motion of Defendants for Summary Judgment and for Attorney Fees.
" 6	(38)	Order (Jones, J.) "GRANTING" Motion, for reasons stated in open court, Motion of Defendant, International Brotherhood of Teamsters, etc., for Summary Judgment and "DENYING", for reasons stated in open court, Motion of Defendant, International Brotherhood of Teamster, (sic),etc., for Attorney's Fees. (See pleading No. 22)
" 17	(39)	Memorandum and Order (Jones, J.) "GRANTING" with respect to liability the Motion of Defendant, International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers of America for Summary Judgment and "DENYING" request of International Brotherhood of Teamsters, Chauffeurs, and Warehousemen and Helpers

Civil Docket Continuation Sheet

Plaintiff	Defendant	J
PHILIP DEL COSTELLO	INTERNATIONAL BROTHERHOOD OF TEAMSTERS, etc., et al.	Dkt. H-78-436 Page 5 of ___ Pages

Date 1981	NR	PROCEEDINGS
Mar. 17	(39)	of America, for Attorney Fees and costs: "GRANTING" with respect to the claim for Punitive Damages, and "DENIED" in all other respects, the Motion of Local 557, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America for Summary Judgment; "GRANTING" with respect to the claim for Punitive Damages, and "DENIED" in all other respects, the Motion of Anchor Motor Freight for Summary Judgment. (c/m 3/17/81 PH)
May 5	(49)	Joint Motion of Defendants for Reconsideration of Court's Order of March 17, 1981, and attachment. (c/s)
		VOL. III
" 27	(54)	Response of Plaintiff to Joint Motion of Defendants for Summary Judgment, Brief, Affidavit of Plaintiff, Philip Del Costello, Request for Hearing, and Exhibits 1 thru 9. (c/s)
June 8	(55)	Motion and Order (Jones, J.), extending the time within which Defendant, Local 557, shall reply

Continued on Page 6.

Date 1981	NR	PROCEEDINGS
June	8 (55)	to the response of Plaintiff to Motion of Defendant, Local 557, for Summary Judgment to and including June 26, 1981.
July	14 (58)	Reply Memorandum of Defendant, Local 557, in support of Motion for Reconsideration of Court's Order of March 17, 1981, and Attachments. (c/s)
"	20 (59)	Retroactive application of Defendant, Anchor Motor Freight, Inc., of new case law to pending civil actions. (c/s)
"	23 (60)	Affidavit of Plaintiff, Philip Del Costello, and attachment. (c/s)
Aug.	7 (61)	Response of Plaintiff to Memorandum of Defendants in replying to Memorandum of Plaintiff and attachment. (c/s)
Oct.	22 (67)	Memorandum and Order (Jones, J.) (c/m 10/22/81 ph)
"	22 (68)	Order (Jones, J.) "GRANTING" Joint Motion of Defendants for reconsideration; "VACATING" Memorandum and Order of March 17, 1981, as set forth; "ENTERING" Judgment

Continued on Page 7.

Civil Docket Continuation Sheet

Plaintiff	Defendant	J
PHILIP DEL COSTELLO	INTERNATIONAL BROTHERHOOD OF TEAMSTERS, etc., et al.	Dkt. H-78-436 Page 6 of 7 Pages

Date 1981	NR	PROCEEDINGS
		in favor of Defendants, Local 557,
Oct.	22 (68)	International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Anchor Motor Freight, Inc., against Plaintiff; and "DENYING" request of Defendants for Costs and Attorney's Fees. (c/m 10/22/81 ph)
"	27 (69)	Notice of Appeal of Plaintiff. (Filing fee paid) (c/m 10/30/81) (Transcript purchase order form mailed to counsel and request for additional filing fee 10/30/81)

NOTATIONS AS TO OPINIONS

The lower Court Opinions appear at B-1-30 - (Petitioner Writ of Certiorari).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PHILIP DEL COSTELLO
204 Perry Avenue
Edgewood, Maryland 21040

Plaintiff

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS AND WAREHOUSEMEN AND HELPERS OF AMERICA
(For service of process,)
(Please serve:)
FRANK FITZSIMMONS, President
25 Louisiana Avenue, N.W.
Washington, D.C. 20001
and
LOCAL 557, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA
(For service of process,)
(Please serve:)
JOSEPH FABULA,
President of Local 557
6000 Erdman Avenue
Baltimore, Maryland 21205
and
ANCHOR MOTOR FREIGHT, INC.,
(For service of process,)
(Please serve:)
RESIDENT AGENT,
CORPORATION TRUST, INCORPORATED
First Maryland Building
25 S. Charles Street
Baltimore, Maryland 21202

Defendants

CIVIL ACTION NO._____

COMPLAINT
PRAYER FOR A JURY TRIAL
JURISDICTIONAL STATEMENT

This Court has jurisdiction under Title 29, USCA 185, 29, USC 301, 29 USCA 411.

Venue is laid in this District because the Defendant, Local Union Number 557, of the Defendant, International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers of America, otherwise known as Freight Drivers and Helpers, represents employees for collective bargaining in the Baltimore, Maryland, area, and maintains its offices at 6000 Erdman Avenue, Baltimore, Maryland 21205; the Defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is the International Union, and regularly negotiates contracts on behalf of all of its local unions, including the Defendant, Local Union 557, and regularly enters into such collective bargaining agreements as parties thereto,

including, but not limited to, the representation of its members pursuant to Grievance Procedures set forth in its Contract, to which all of the parties to this action are bound, through and by its servant, agent and/or employee, Arthur C. Morningstar, Jr., business representative of Local 557; and that the aforesaid Arthur C. Morningstar, Jr., is regularly employed as an officer of Local 557 within the Baltimore area for the purpose of representing individual union members, including, but not limited to, the Plaintiff to this action.

The Defendant corporation, Anchor Motor Freight, Inc., is a lawful corporation under the laws of the State of Delaware, but maintains and operates a freight and/or car hauling business on Broening Highway and Cardiff Avenue located in Baltimore, Maryland, at which place the aforesaid corporation regularly does

business in the City of Baltimore, State of Maryland.

The Plaintiff, Philip Del Costello, is a citizen and resident of the State of Maryland, and from 1973 to June 27, 1977, and/or July 19, 1977, was an employee of the aforementioned Defendant, Anchor Motor Freight, Inc., at Broening Highway and Cardiff Avenue, in the capacity of a full time truck driver, and was and is a member of the Defendant, Local 557, as well as a member of the International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers of America (the International) from 1973 up to and including the present time, and as of the date of his discharge, as aforesaid, was in the bargaining unit covered by the collective bargaining agreement otherwise known as "The National Master Automobile Transporters Agreement", a copy of which is attached hereto and made a part hereof, and marked Plaintiff's

Exhibit No. 1.

That the aforesaid collective bargaining agreement was and is binding amongst and between all of the Defendants, and each of them, and the Plaintiff has been represented in the collective bargaining negotiations and in grievance and arbitration proceedings by the Defendant, International Union, through its Local Union 557, and more particularly, through and by its local business representative of Local 557, Arthur C. Morningstar, Jr.

This suit is brought by the Plaintiff, a former employee of the Defendant corporation, and a member of both local and the international union Defendants, all of the Defendants and each of them are parties to and bound by the aforementioned collective bargaining agreement (otherwise referred to as Plaintiff's Exhibit No.), for the purpose of reinstatement to his former position as an over-the-road truck driver

of the Defendant Company and for damages occasioned by the termination of his employment resulting from the Union's breach of their duty of fair representation, and the Company's contractual violation of the collective bargaining agreement, and the Company's and Union's intentional conspiracy to interfere with and remove the Plaintiff from his job and livelihood without cause, and for numerous violations of his contract and other rights.

That the amount in controversy, exclusive of interest and costs, exceeds Ten Thousand Dollars ($10,000).

COUNT ONE

1. That from 1973 to June 27, 1977, the Plaintiff, Philip Del Costello, as previously alleged, was a full time employee of the Anchor Motor Freight, Inc., which was and is engaged in the business of hauling automobiles and freight from Baltimore City to numerous

areas of the country, including, but not limited to, Canada.

2. That during the entire course of his employment with Anchor Motor Freight, Inc., hereinafter referred to as the "Company", the Plaintiff performed his duties in an exemplary and/or satisfactory manner.

3. More particularly, the duties that the Plaintiff was required to perform immediately pertinent to this cause of action included, but were not limited to, the following:

After reporting for work at the Baltimore terminal on Broening Highway and Cardiff Avenue, it was and is the practice of the Company to assign to the Plaintiff a particular tractor-trailer truck, together with requisite documents, for the purpose of transporting a given number of automobiles to a destination within and/or beyond the State of Maryland. After receiving the aforementioned assignment,

it was the obligation of the driver to whom the tractor-trailer truck was given for the above stated purpose to conduct a "pre-trip inspection" of the tractor-trailer truck for the purpose of determining whether or not the aforesaid truck and its equipment was sufficiently safe to make the assigned trip in accordance with numerous Department of Transportation regulations, other State and Federal laws and other safety standards, including, but but not limited to, Article 43 of the National Master Automobile Transporters Agreement, otherwise known as Plaintiff's Exhibit No. 1, which in pertinent part provides:

> "The employer shall not require any of its employees to operate vehicles not equipped with safety appliances required by law, or any vehicle not in safe operating condition. It shall be the employers responsibility to see that all safety equipment is checked and the driver shall also be responsible for checking safety equipment before leaving on trips... ... ."

Article 43, Section 2A, provided in pertinent part:

> "All employees shall report as soon as possible to the employer in writing all defects in equipment .... ."

Article 43, Section 2B, provides in pertinent part:

> "All equipment which is refused because not mechanically sound or properly equipped as required by law, shall be appropriately tagged so that it cannot be used by any other driver until the maintenance department has adjusted the complaint. In the event that equipment is shopped for repairs, the work order shall automatically be made available for inspection to the driver assigned to that equipment upon request of said driver."

Article 43, Section 3, sub-heading, "Vehicle Reports":

> "Written reports by an employee of a vehicle not being in safe operating condition shall receive prompt attention; otherwise, such employees may appeal directly to the Union in the form of a complaint."

4. For purposes of complying with the

above quoted sections of Article 43, the Company, by established custom and usage, permitted the driver during the course of the pre-trip inspection discretion to determine preliminarily whether or not the truck assigned should be "shopped" for defects and/or defective equipment revealed by the driver's inspection which the driver reasonably believes renders the truck unsafe to drive. If the pre-trip inspection by the driver disclosed the aforementioned defects which he deemed unsafe, the driver was required to list those defects which he observed on a document called a "Dock Repair Order". The driver was required to submit the Dock Repair Order to the foreman of the repair and/or maintenance shop at which time the truck would be "shopped", that is, the truck would be brought into the maintenance and repair shop for the purpose of determining the kind and type of repairs, if any, necessary to render

the truck safe for the purpose of making the trip.

5. Thereafter, the Dock Repair Order would be reviewed by the foreman and thereafter would be given to the maintenance crew under his direction and control, at which time the foreman had the authority, based upon his own observations and the observations of the maintenance crew, to decide which of the defects delineated in the Dock Repair Order required repairs, and the kind and type of measures and corrections that would be necessary to render the tractor-trailer safe for the purpose of making the aforementioned trip.

6. Thereafter, those repairs deemed necessary, as aforesaid, would be made, after which the member and/or members of the mainten ance department making the repairs would be permitted to make the appropriate notation on the "Dock Order" as to those repairs which in

fact were performed. Custom, usage and practice further established that if the defects noted on the Dock Order or independently revealed by the inspection of the foreman or the maintenance crew were of such a nature that repair of the aforementioned truck would take more than several hours, the truck would be retained by the maintenance department, and the driver would be authorized to request another truck for the purpose of making the assigned trip.

7. That on or about June 27, 197[illegible], the Plaintiff, Philip Del Costello, reported to work at the Company's Baltimore location at approximately 10:00 a.m., at which time the Company assigned to him a Bankhead tractor-trailer truck weighing approximately 38,000 pounds which he was required to load with new cars, and thereafter transport those cars from Baltimore, Maryland, to Montreal, Canada, and

thereafter return from Montreal, Canada, with another load of cars back to Washington, D.C., with the same truck.

8. In accordance with all of the aforementioned regularions, tractor provisions, standards, customs and usages regarding safety as aforesaid, the Plaintiff conducted a pre-trip inspection of the aforesaid truck, which revealed numerous defective conditions requiring repair which he recorded on a "Dock Repair Order", after which the Plaintiff brought the truck into the maintenance department and delivered the Dock Repair Order to the shop foreman.

9. Thereafter, the shop foreman, contrary to usual customs and practices established, took possession of the Dock Repair Order given him by the Plaintiff, and thereafter directed some of the maintenance crew members to make some, but not all, of the necessary repairs. Those members of the maintenance crew

directed to make the aforementioned repairs by the shop foreman were not given a copy of the Dock Repair Order, and for that reason did not make any notations on this Order as to those major repairs which one or more of the members of the maintenance crew were directed to perform. The foreman was advised that the kind and type of repair that was performed was inadequate and rendered the tractor-trailer truck unsafe for the purpose of being driven over the road and/or hauling cars. The numerous defects listed on the Dock Repair Order were never repaired or observed by the maintenance crew because of the shop foreman's refusal to point them out to the maintenance crew and/or permit them to correct the same, as a result of which the aforementioned truck was unsafe.

10. That several hours after the truck had been shopped, as aforesaid, the Plaintiff returned to the shop and was told by the foreman,

"The truck is ready", to which the Plaintiff made another inspection of the truck and noted numerous and substantial defects which rendered the truck unsafe and inherently dangerous.

11. That immediately thereafter the Plaintiff pointed out these defects to the member and/or members of the maintenance crew who performed the same, and was told by the individual mechanic and/or mechanics that the foreman did not provide them with a copy of the Dock Repair Order, but ordered them to make designated repairs which they considered insufficient, and rendered the truck unsafe for the public, the driver and the cars that were to be transported. The Plaintiff was further advised by the person and/or persons performing the work under the direction of the shop foreman that the necessary repairs required to render the truck safe were "vetoed" by the foreman because it would "take too much time".

12. Thereafter, the Plaintiff apprised the Company through its servants, agents and/or employees that he respectfully declined to load and/or drive the aforementioned truck because it exposed the Plaintiff personally and the public generally to grave and inherent danger. That the Company, through its servants, agents and/or employees, thereafter ordered the Plaintiff to drive the truck and advised him that his failure to do so would be regarded as voluntarily quitting by the Company. The Plaintiff responded to the servants, agents and/or employees of the Company by again pointing out the defects which had not been properly repaired and politely requested that the Defendant provide him with another tractor-trailer truck for the purpose of making the trip. That the Company summarily denied this request, after which he was ejected from the premises by the servants, agents and/or employees of the Company.

13. That the Plaintiff contacted Arthur Morningstar, Jr., business agent of the Defendant, Local 557 of the Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and advised him of the termination of his employment by the Defendant Company, and the events resulting in termination.

14. That within the next several days or week the Defendant Union, through its representative, Arthur Morningstar, Jr., briefly met with the Plaintiff and representatives of the Defendant Company at an informal conference, at which time the Company refused to discuss or hear the Plaintiff's reasons for refusing to operate the aforesaid truck, but engaged in name calling and summarily insisted that the Plaintiff's employment was terminated.

15. That the aforementioned Arthur C. Morningstar, Jr., by letter of July 5, 1977, a copy of which is attached hereto and made a

part hereof, and marked Plaintiff's Exhibit No. 2, advised the Defendant Company that there was a disagreement with the discharge of the Plaintiff and pursuant to Article 7 of the Plaintiff's Exhibit No. 1, a hearing would be held on July 19, 1977, for the purpose of hearing the merits of the discharge.

16. That the Plaintiff appeared at such hearing together with the Defendant Union and/or Local 557, who represented the aforementioned Plaintiff in a discriminatory, arbitrary and perfunctory manner as more particularly set forth in Count Two of this Complaint, as a result of which the Eastern Conference by formal decision on July 19, 1977, a copy of which is attached hereto and made a part hereof and marked Plaintiff's Exhibit No. 3, ruled in favor of the Company and in substance decided that the Plaintiff voluntarily quit.

17. That the Plaintiff has exhausted

all of his internal remedies.

18. That notwithstanding, the decision of the Eastern Conference Automobile Transporters Joint Committee decision, the termination of the Plaintiff by the Defendant Company on June 27, 1977, constituted a violation of his contractual rights as aforesaid, as prescribed by Article 43 of Plaintiff's Exhibit No. 1, otherwise prescribed by Federal Motor Carriers Safety Regulations promulgated by the United States Laws and safety standards.

19. That the employment of the Plaintiff was intentionally and maliciously terminated by the Defendant Company because of the Plaintiff's past activity at the Company and within the Union against unsafe equipment, unsafe tractor-trailer trucks and equipment owned, operated and controlled by the aforesaid Corporate Defendant.

20. That by reason of the Plaintiff's

unlawful discharge, he sustained lost time and/or money from his employment as a professional truck driver, severe emotional distress, embarrassment and anxiety, and loss of other benefits incident to his employment contract as a professional truck driver.

Therefore, this suit is brought and the Plaintiff claims:

a. Two Hundred and Fifty Thousand ($250,000) Dollars in compensatory damages.

b. One Million ($1,000,000) Dollars in punitive damages.

c. Reasonable attorney's fees and costs.

d. The Plaintiff further requested, by way of relief, that this Court pass an Order reinstating him as a full time truck driver as of the date of his discharge with back pay together with all of the rights and benefits to which he was and is and would be entitled.

e. That he be granted such other and further relief as justice requires.

COUNT TWO

21. That the Plaintiff alleges and realleges all of the allegations contained in Count One and incorporates the same into this Count as fully pleaded herein, and further alleges that a hearing was scheduled and held on July 19, 1977, before the Eastern Conference Automobile Transporters Joint Committee pursuant to Article 7 and Article 39 of the National Masters Automobile Transporters Agreement, which was and is composed of three representatives of management, which had power by majority vote to decide whether or not the Plaintiff voluntarily quit, or was otherwise justified by reason of the Company's failure to maintain his tractor-trailer in a safe condition pursuant to Article 43 of the aforementioned collective bargaining agreement, referred to as Plaintiff's

Exhibit No. 1, as well as the laws, standards, rules and regulations, customs and usages governing safety and thereby retain his job.

22. That the decision by the majority of the panel pursuant to and in accordance with Article 7 as aforesaid, was and is final, binding and conclusive upon the Union, the Company and the Plaintiff, with no right of further appeal except in cases of a deadlock. That under the terms of the aforementioned collective bargaining agreement (Exhibit 1), the Union by and through Arthur C. Morningstar, Jr., was the exclusive representative of the Plaintiff.

23. That the aforesaid International Union and its Local 557 through and by its servant, agent and/or employee, business representative, Arthur C. Morningstar, Jr., breached its duty of fair representation to the Plaintiff in that the said Arthur C.

Morningstar, Jr., after being apprised of the specific and detailed account of the numerous defects and dangerous conditions of the aforementioned tractor-trailer truck on or about June 28, 1977, up to and including the date of the hearing before the Joint Committee on July 19, 1977, made absolutely no independent investigation of the truck which was available at the time, and that the aforementioned business representative, after being given the names of the mechanics who observed the aforementioned defects and dangerous conditions subsequent to making repairs which they knew were inadequate under the direction of representatives of the Company, to whom they expressed the fact that the aforementioned defects rendered the truck unsafe, were never interviewed, were never called as witnesses, and were never requested to provide statements and/or affidavits for submission to the Joint Committee in

circumstances where the aforementioned mechanics, all of whom were Union members of Local 557, were ready, able and willing to submit such evidence and cooperate.

24. Moreover, the aforementioned mechanics possessed the expertise to apprise the Committee that the aforementioned tractor-trailer truck was unsafe at the time that the Company directed the Plaintiff to load the truck and commence the trip.

25. That the Plaintiff had requested said Arthur C. Morningstar, Jr., to make this investigation and to interview the mechanics with respect to the condition of the truck, and thereafter request them to appear at the hearing for purposes of testifying on behalf of the Plaintiff, but the said Arthur C. Morningstar, Jr., advised the Plaintiff that such investigation was unnecessary and that interview and production of these witnesses

were unnecessary, and introduction of their statements were similarly unnecessary.

26. That the aforementioned Arthur C. Morningstar, Jr., in fact lacked knowledge and/or expert knowledge about tractor-trailer trucks sufficient to enable him to intelligently represent the Plaintiff at the aforementioned arbitration hearing.

27. That the aforementioned Arthur C. Morningstar, Jr., met with the Plaintiff for approximately fifteen minutes or less on the day before the hearing and/or the date of the hearing, and he conducted no interview concerning the subject matter of the controversy, but generally apprised the Plaintiff of some of the procedures pertinent to the hearing, and again assured the Plaintiff he was "going to win", without the necessity of going into extensive and/or exhaustive and/or adequate detail with respect to the specific allegations

of unsafety.

28. Thereafter, Arthur C. Morningstar, Jr., conducted absolutely no cross-examination, and turned to the Plaintiff and said, "Tell your story."

29. That the hearing was held on July 19, 1977, as aforesaid, at which time the Company presented through second and third hand hearsay evidence as well as false statements made by the Company witnesses who were represented by counsel for the Company.

30. That the entire hearing lasted one hour in circumstances which required a presentation of evidence which required extensive testimony which would and should have taken substantial time in order that the panel be apprised of sufficient facts and information in order to enable them to reach a fair, rational and just decision.

31. That Arthur C. Morningstar, Jr., had the opportunity to produce the truck at the hearing for purposes of examination by the panel, and that he failed to do so and/or, alternatively, failed to request the Company to do so. That no transcript of the proceedings was taken of the testimony adduced at the hearing.

32. That when the Plaintiff requested the said Arthur C. Morningstar, Jr., to conduct an investigation by examining the truck, interviewing witnesses, he declined to do so on the ground that he was engaged in numerous other duties and involved in other Union matters which did not afford him sufficient time to conduct an investigation as requested, and to interview those witnesses whose testimony and expert knowledge was crucial to the Plaintiff's cause, but responded by telling the Plaintiff, "Don't worry, everything will be okay, we are

going to win."

33. That the Plaintiff was afforded token, inadequate and perfunctory representation by the aforesaid Defendant Union, and their action through and by their servant, agent and/or employee, Arthur C. Morningstar, Jr., was arbitrary, discriminatory, hostile to the Plaintiff, before, during and throughout the entire grievance and arbitration procedures, which resulted in an abrupt hearing in violation of the Plaintiff's rights to substantive and procedural due process of law, and that the aforementioned acts of omission and commission by the aforementioned Defendant Union, and more particularly its agent, Arthur C. Morningstar, Jr., constituted a breach of the duty of fair representation owed by them to the Plaintiff, by Arthur C. Morningstar, Jr., and that on August 19, 1977, by letter of Arthur C. Morningstar, Jr., which is attached hereto,

made a part hereof and marked Plaintiff's Exhibit No. 4, the Plaintiff was apprised of the alleged basis for the decision of the Arbitration Committee, and he had until September 20, 1977, to make additions, deletions or corrections in writing regarding the decision rendered, and the Plaintiff by letter of September 14, 1977, a copy of which is attached hereto and made a part hereof and marked Plaintiff's Exhibit No. 5, in some detail states the reasons and facts in support of his contention that the representation of the Defendant Union was unfair, and similarly related that the facts supported his contention that the decision of the arbitration committee was also unfair and in error.

34. That the Defendant Union's actions constituted a breach of the duty of fair representation owed by them to the Plaintiff, and that their actions were intentionally and

maliciously calculated to have the Plaintiff discharged from the Company.

That as a result of this breach of the Union's duty of fair representation to the Plaintiff, the Plaintiff suffered emotional distress and anguish, was terminated from his employment as aforesaid, lost substantial monies as a result of his discharge together with all fringe benefits that would have accrued to him as a full time truck driver for the aforesaid Company.

Wherefore, the Plaintiff claims:

a. Two Hundred and Fifty Thousand ($250,000) Dollars in compensatory damages.

b. One Million ($1,000,000) Dollars in punitive damages.

c. Reasonable Attorney's fees and costs.

COUNT THREE

35. The Plaintiff alleges and realleges

all of the allegations and facts contained in Counts One and Two of this Complaint, and incorporates the same by reference into this Count as if fully pleaded herein, and further alleges that the Defendants conspired and colluded to have the Plaintiff discharged by the Company on June 27, 1977 and/or July 19, 1977, by falsely claiming and/or acquiescing in and to the false and fraudulent claim that the Plaintiff had intentionally quit by his refusal to operate and load and drive the aforementioned tractor-trailer truck which was in an unsafe condition.

36. That the Defendants' actions were intentional and malicious, and calculated to deprive the Plaintiff of his job as a full time over-the-road truck driver for Anchor Motor Freight, Inc., and as a reuslt of the Defendants' conspiracy the Plaintiff suffered substantial emotional distress and anxiety; that

he lost and is losing substantial wages due to his unlawful discharge together with fringe benefits to which he would be entitled.

Wherefore, the Plaintiff brings this action and claims:

a. Two Hundred and Fifty Thousand ($250,000) Dollars in compensatory damages.

b. One Million ($1,000,000) Dollars in punitive damages.

c. Counsel fees and costs.

d. In addition, the Plaintiff respectfully requests that this Court pass an Order compelling the Defendant, Anchor Motor Freight, Inc., to restore him to the status of a full time over-the-road truck driver as of June 27, 1977, together with back pay and all of the rights, benefits, and privileges to which he would have been entitled in the absence of his wrongful termination.

e. That this Court grant such other

and further relief as justice requires.

/s/

WILLIAM H. ZINMAN
215 Tower Building
222 E. Baltimore Street
Baltimore, Maryland 21202
727-6151
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PHILIP DEL COSTELLO *
Plaintiff

vs. *

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS CIVIL ACTION
OF AMERICA *
and NO. H-78-436
FREIGHT DRIVERS AND HELPERS,
LOCAL 557
and *
ANCHOR MOTOR FREIGHT, INC.
Defendants

*

****

ANSWER OF FREIGHT DRIVERS
AND HELPERS, LOCAL 557

Freight Drivers and Helpers, Local 557, Defendant, by Bernard W. Rubenstein, Carl S. Yaller, and Edelman, Levy and Rubenstein, P.A., for an Answer to the Complaint, say:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The Complaint fails to state a claim upon which relief can be granted pursuant to 29 USC §411, in that it fails to allege any violation of that statute.

THIRD DEFENSE

The Complaint fails to state a claim upon which relief may be granted, since Plaintiff has failed to fully exhaust all internal remedies within this Defendant.

FOURTH DEFENSE

This action is barred by the doctrines of: (1) collateral estoppel; (2) arbitration and award; and (3) settlement and satisfaction.

FIFTH DEFENSE

Specifically responding to the allegations contained in the Complaint, and subject to and without waiving the foregoing defenses, this Defendant further says:

JURISDICTION STATEMENT

This Defendant denies the following allegations contained within the Jurisdictional Statement:

(a) That this Court enjoys jurisdiction pursuant to 29 USC, §301 or §411.

(b) That Arthur C. Morningstar is an agent of Defendant International Union.

(c) That Plaintiff was ever discharged by Defendant Anchor Motor Freight, Inc. (Anchor).

(d) That the applicable collective bargaining agreement is binding between this Defendant and the International Union.

(e) That this Defendant breached a duty of fair representation towards Plaintiff.

(f) That the Defendant Anchor breached the collective bargaining agreement.

(g) That any defendants conspired to violate any contractual or other rights of Plaintiff.

(h) That the amount in controversy exceeds Ten Thousand Dollars.

All other allegations contained within

the Jurisdictional Statement of the Complaint are admitted.

COUNT ONE

1. Admitted.

2. Denied.

3. The allegations contained within Paragraph 3 are admitted; however, this Defendant avers that no underlining is contained in the quoted language.

4. Admitted.

5. Admitted.

6. Concerning the allegations contained within Paragraph 6, this Defendant avers that it is the decision of Defendant Anchor to determine whether an employee shall pay during the course of these repairs, or whether the employee shall be issued an alternate vehicle. All other allegations of this Paragraph are admitted.

7. The allegations of Paragraph 7 are admitted; however, this Defendant avers that the designations mentioned in this Paragraph refer to general geographical locations, rather

than precise political boundaries.

8. Admitted.

9. Denied.

10. Denied.

11. This Defendant is without sufficient first-hand knowledge to admit or deny the allegations contained within Paragraph 11, and consequently they are denied.

12. This Defendant is without sufficient first-hand knowledge to admit or deny the allegations contained within the first and third sentences of Paragraph 12. The second sentence of Paragraph 12 is admitted. The fourth sentence of Paragraph 12 is denied.

13. Admitted.

14. The allegations of Paragraph 14 are admitted; however, this Defendant avers that all name-calling at said meeting was between Plaintiff and Defendant Anchor.

15. This Defendant denies ever having characterized the termination of Plaintiff as

a discharge. The remaining allegations of Paragraph 15 are admitted.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

Wherefore, the Plaintiff is entitled to no remedy pursuant to Count One.

COUNT TWO

21. That Defendant incorporates by reference its answers to Paragraphs 1-20, as though set forth fully herein. This Defendant denies that the hearing panel was composed as alleged; however, this Defendant admits all the remaining allegations contained within Paragraph 21.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Concerning the allegations contained within Paragraph 28 of the Complaint, this Defendant denies that Arthur C. Morningstar, Jr., said "Tell your story." This Defendant admits that Arthur C. Morningstar, Jr., conducted no cross-examination, but avers that procedural rules forbid such cross-examination.

29. Denied.

30. Denied.

31. The allegations contained within the first sentence of Paragraph 31 are denied. The remaining allegations of Paragraph 31 are admitted.

32. Denied.

33. Denied.

34. Denied.

Wherefore, Plaintiff is entitled to no

remedy pursuant to Count Two.

COUNT THREE

35. This Defendant incorporates by reference its answers to Paragraphs 1-34, as though set forth fully herein. The allegations contained within Paragraph 35 are denied.

Wherefore, Plaintiff is entitled to no remedy pursuant to Count Three.

/s/
Bernard W. Rubenstein

/s/
Carl S. Yaller
Edelman, Levy and
Rubenstein
Suite 2400, Ten Light St.
Baltimore, Maryland
21202
752-6160
Attorneys for Defendant
Freight Drivers and
Helpers, Local 557

I HEREBY CERTIFY that copies of the aforegoing Answer, Motion and Memorandum were mailed, postage prepaid, this 10th day of April, 1978, to William H. Zinman, Esq., 215

Tower Bldg., 222 E. Baltimore Street, Baltimore, Maryland 21202; Bernard S. Goldfarb, Esq., Goldfarb & Reznick, 1825 The Illuminating Building, 55 Public Square, Cleveland, Ohio 44113.

/s/
Carl S. Yaller

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PHILIP DEL COSTELLO Plaintiff)	
vs.)	CIVIL ACTION NO. H-78-436
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS AND WAREHOUSEMEN AND HELPERS OF AMERICA, et al. Defendants)	SEPARATE ANSWER OF DEFENDANT ANCHOR MOTOR FREIGHT, INC.

Now comes Defendant, Anchor Motor Freight, Inc. (Anchor), and answers the Complaint of the Plaintiff as follows:

JURISDICTIONAL STATEMENT OF COMPLAINT

1. Defendant denies the Plaintiff's claim that jurisdiction is within this Court.

2. Defendant is without knowledge of Plaintiff's allegations supporting venue in this Court and therefore denies each and every allegation in Plaintiff's Complaint relating thereto.

3. Defendant admits that it is a corporation incorporated under the laws of the

State of Delaware and that it has an office located at Broening Highway and Cardiff Avenue in Baltimore, Maryland.

4. Defendant is without knowledge relating to those references in Plaintiff's Complaint pertaining to Plaintiff's citizenship, residence, union membership, and employee status as alleged thereon, Therefore, Defendant denies each and every allegation in Plaintiff's Complaint relating thereto.

5. Defendant admits that it is a party to several collective bargaining agreements. Among them is the National Master Automobile Transporters Agreement and the Eastern Conference Area Truckaway, Driveaway, Yard and Shop Supplement (June 1, 1976 - May 31, 1979). However, Defendant denies the remaining allegations pertaining to the legal effect of said named agreement as alleged in Plaintiff's Complaint.

6. Defendant denies each and every allegation in the Complaint's Jurisdictional Statement not specifically admitted herein to be true.

FIRST COUNT

7. Defendant admits the allegations in Paragraph 1 of Plaintiff's Complaint.

8. Defendant denies the allegations in Paragraph 2 of Plaintiff's Complaint.

9. Defendant admits the allegations in Paragraph 3 of Plaintiff's Complaint, but denies the quoted statements are underlined.

10. Defendant denies the allegations in Paragraph 4 of Plaintiff's Complaint.

11. Defendant admits the allegations in Paragraph 5 of Plaintiff's Complaint, eliminating the usage of words "thereafter" and "would".

12. Defendant admits the allegations in Paragraph 6 of Plaintiff's Complaint.

13. Defendant admits the allegations in Paragraph 7 of Plaintiff's Complaint.

14. Defendant admits the allegations in Paragraph 8 of Plaintiff's Complaint.

15. Defendant denies the allegations in Paragraph 9 of Plaintiff's Complaint.

16. Defendant denies the allegations in Paragraph 10 of Plaintiff's Complaint.

17. Defendant denies the allegations in Paragraph 11 of Plaintiff's Complaint.

18. Defendant denies the allegations in Paragraph 12 of Plaintiff's Complaint, excepting that refusal to drive "the truck" amounts to "voluntarily quitting".

19. Defendant is without knowledge of the allegations in Paragraph 13 of Plaintiff's Complaint and therefore denies each and every allegation contained therein.

20. Defendant denies the allegations in Paragraph 14 of Plaintiff's Complaint, but

admits that a meeting took place.

21. Defendant admits the allegations in Paragraph 15 of Plaintiff's Complaint but denies that Plaintiff's termination was characterized as a "discharge".

22. Defendant denies the allegations in Paragraph 16 of Plaintiff's Complaint.

23. Defendant denies the allegations in Paragraph 17 of Plaintiff's Complaint.

24. Defendant denies the allegations in Paragraph 18 of Plaintiff's Complaint.

25. Defendant denies the allegations in Paragraph 19 of Plaintiff's Complaint.

26. Defendant denies the allegations in Paragraph 20 of Plaintiff's Complaint.

SECOND COUNT

27. Defendant denies the allegations in Paragraph 21 of Plaintiff's Complaint but admits the joint committee had "power" as alleged.

28. Defendant admits the allegations in Paragraph 22 of Plaintiff's Complaint but denies the reference to Arthur C. Morningstar, Jr., as being "exclusive".

29. Defendant denies the allegations in Paragraph 23 of Plaintiff's Complaint.

30. Defendant denies the allegations in Paragraph 24 of Plaintiff's Complaint.

31. Defendant is without knowledge of the allegations in Paragraph 25 of Plaintiff's Complaint and therefore denies each and every allegation contained therein.

32. Defendant denies the allegations of Paragraph 26 of Plaintiff's Complaint.

33. Defendant is without knowledge of the allegations in Paragraph 27 of Plaintiff's Complaint and therefore denies each and every allegation contained therein.

34. Defendant denies the allegations in Paragraph 28 of Plaintiff's Complaint and

further states that all procedural rules were complied with.

35. Defendant denies the allegations in Paragraph 29 of Plaintiff's Complaint.

36. Defendant denies the allegations in Paragraph 30 of Plaintiff's Complaint.

37. Defendant is without knowledge of the allegations in Paragraph 31 of Plaintiff's Complaint as to Arthur C. Morningstar, Jr., and therefore denies the same, and further states that a transcript is not required.

38. Defendant is without knowledge of the allegations in Paragraph 32 of Plaintiff's Complaint and therefore denies each and every allegation contained therein.

39. Defendant denies the allegations in Paragraph 33 of Plaintiff's Complaint.

40. Defendant denies the allegations in Paragraph 34 of Plaintiff's Complaint.

THIRD COUNT

41. Defendant denies the allegations in Paragraph 35 of Plaintiff's Complaint.

42. Defendant denies the allegations in Paragraph 36 of Plaintiff's Complaint.

43. Defendant denies each and every allegation in Plaintiff's Complaint not specifically admitted to be true.

AFFIRMATIVE DEFENSE ONE

44. In addition to the admissions and denials contained in the foregoing paragraphs, and realleged herein with equal force, Defendant Anchor states that the Plaintiff employed by Anchor was discharged for good and sufficient cause consistent with the pertinent labor agreement; that Local Union No. 557 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America was the collective bargaining agent for the Plaintiff and did bargain and represent the

Plaintiff and did process the grievance of the Plaintiff in a diligent and conscientious manner through the grievance machinery of the pertinent labor agreement, and that the Plaintiff did exhaust his rights through said contractual grievance machinery and that the arbitral process pursuant to the labor agreement did sustain the discharge as being consistent with the agreement and for good and sufficient cause and that the grievance machinery was given "full play".

AFFIRMATIVE DEFENSE TWO

45. For its second affirmative defense, Defendant Anchor states that the Plaintiff's Complaint has failed to state a claim upon which relief may be granted.

AFFIRMATIVE DEFENSE THREE

46. For its third affirmative defense, Defendant Anchor states that the Plaintiff's Complaint is barred by the applicable statute

of limitations.

AFFIRMATIVE DEFENSE FOUR

47. Defendant Anchor states for its fourth affirmative defense that the Plaintiff is barred by the doctrine of laches and estoppel.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant Anchor Motor Freight, Inc., prays that the Complaint be dismissed and that it may go hence with its costs, and for such other and further relief as the Court may deem just and equitable, including but not limited to reasonable attorney fees and costs.

April 18, 1978
Cleveland, Ohio

/s/
BERNARD S. GOLDFARB
MICHAEL A. POHL
Goldfarb & Reznick
1825 The Illuminating Bldg.
55 Public Square
Cleveland, Ohio 44113
(216) 781-0383

April 20, 1978
Baltimore, Maryland

ARNOLD M. WEINER, ESQUIRE
Melnicove, Kaufman & Weiner, P.A.
Charles Center South
36 S Charles Street
Baltimore, Maryland 21201
(301) 332-8533
Attorneys for Defendant Anchor Motor Freight, Inc.

CERTIFICATE OF SERVICE

A copy of the foregoing Separate Answer of Defendant Anchor Motor Freight, Inc. was this 20th day of April, 1978, mailed by certified mail, return receipt requested to the following:

William H. Zinman, Esquire
Attorney for Plaintiff
215 Tower Building
222 E. Baltimore Street
Baltimore, Maryland 21202

International Brotherhood of Teamsters, Chauffeurs, and Warehousemen & Helpers of America
25 Louisiana Avenue, N.W.
Washington, D.C. 20001

Bernard W. Rubenstein
Carl S. Yaller
Edelman, Levy & Rubenstein
Attorneys for Defendant
Freight Drivers and Helpers Local 557
Suite 2400, Ten Light Street
Baltimore, Maryland 21202

/s/
ARNOLD M. WEINER

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PHILIP DEL COSTELLO Plaintiff	*	
vs	*	CIVIL ACTION
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA and FREIGHT DRIVERS AND HELPERS LOCAL 557 and ANCHOR MOTOR FREIGHT, INC. Defendants	*	NO. H-78-436

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INTERROGATORIES

The Plaintiff, Philip Del Costello, by his attorney, William H. Zinman, propounds the following Interrogatories to be answered under oath by the Defendant, Freight Drivers and Helpers Local 557.

a. These Interrogatories are continuing in character so as to require supplemental answers to these interrogatories of the

Defendant obtains further or different information before trial.

b. Where the name or identity of the person is requested, state his or her full name, home address and also business address.

c. Unless otherwise indicated, these interrogatories refer to the time, place and circumstances of the occurrence mentioned or complained of in the pleadings.

d. Where knowledge or information or possession of a party is required, such request includes knowledge of the party's agents, representatives and, unless otherwise privileged, by his attorney.

e. When an answer is made by a corporate defendant or an organization or association, state the name, address and title of the person supplying the information.

f. "Document", whenever used in these interrogatories, means:

1. An item in writing, including by way of example, and not in limitation, notes, correspondence, memoranda, instruments, drafts, surveys, reports, invoices, receipts, bills, ledgers, minutes, transcripts, statements (whether or not signed by the party making the same).

2. Any tape, record or other electro-mechanical means of recording or storing voices or data.

3. Any photograph, movie, slide, chart, graph, plat, drawing or other visual representation of data.

g. The word "describe" or "description" whenever used in these interrogatories means, to give the date, subject matter, title or recording reference, and the name, title, business and home addresses of the parties to the item to be described, including the person preparing, recording and

photographing the item.

h. If additional space is needed to answer any of these interrogatories other than the space allowed on the page for the answer, add additional pages for the same.

16. On July 19, 1977, at the Eastern Conference Automobile Transporters Joint Committee did the Company (Anchor Motor Freight), the International (International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America) and/or Local 557 (International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers of America) produce any written or oral statements of persons not present. If the answer is yes, please state:

Answer 16. No.

a. The names of the persons whose statements were introduced.

b. The exact substance of the

written or oral statements that were introduced.

/s/
WILLIAM H. ZINMAN
215 Tower Building
222 E. Baltimore Street
Baltimore, Maryland
21202
727-6151
Attorney for Plaintiff

It is certified this 3 day of July, 1978, that a copy of the aforegoing Interrogatories were mailed to Bernard W. Rubenstein, Esquire, Carl S. Yaller, Esquire, Suite 2400, Ten Light Street, Baltimore, Maryland 21202, attorneys for Defendant, Freight Drivers and Helpers, Local 557, and Arnold M. Weiner, Esq., 36 S. Charles Street, Baltimore, Maryland 21201, Attorney for Defendant, Anchor Motor Freight, Inc., and Robert M. Baptiste, Esq., Roland P. Wilder, Jr., Esq., 25 Louisiana Ave., N.W., Washington, D.C. 20001, Attorneys

for Defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Anthong Abato, Esquire, Maryland Executive Park, 311 Chester Building, 8600 Lasalle Road, Towson, Maryland 21204, Attorney for International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

/s/
WILLIAM H. ZINMAN

I HEREBY CERTIFY that on this 12th day of September, 1978, a copy of the aforegoing Answers to Interrogatories was mailed, postage prepaid, to William H. Zinman, Esq., 215 Tower Building, 222 East Baltimore Street, Baltimore, Maryland 21202, Arnold M. Weiner, Esq., 36 South Charles Street, Baltimore, Maryland 21201, Robert M. Baptiste, Esq., Roland F. Wilder, Jr., Esq., 25 Louisiana Avenue, N.W., Washington, D.C. 20001, and Anthony Abato, Esq., Maryland Executive Park, 311 Chester Building, 8600 Lasalle Road, Towson, Maryland 21204.

/s/
CARL S. YALLER

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PHILIP DEL COSTELLO *
Plaintiff

vs. *

CIVIL ACTION

NO. J-78-436

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, *
WAREHOUSEMEN AND HELPERS
OF AMERICA, et al.
Defendants *

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AFFIDAVIT

I, Philip Del Costello, being duly sworn, deposes and states the following:

1. The Affiant makes this Affidavit from his own personal knowledge.

2. The Affiant presently resides at 2204 Perry Ave., Edgewood, Maryland.

3. The Affiant was formerly a driver for Anchor Motor Freight, and is the Plaintiff in the above entitled case.

On July 19, 1977, the Eastern Conference held a hearing in Atlantic City, New

Jersey, for the purpose of deciding whether or not I was properly discharged by Anchor Motor Freight on June 27, 1977.

At the time I was represented by a Business Agent of Local 557, Arthur Morningstar. Anchor Motor Freight was represented by Daniel Sandy.

Several days after the hearing, I received the Decision of the Eastern Conference upholding my discharge. On August 20, 1977, I received a letter from Arthur Morningstar in which he enclosed the minutes of the conference and advised me that I had until September 20, 1977, to make any additions, deletions or corrections, and otherwise the minutes would be approved by the Conference on that date. (Copies of the September 20, 1977, correspondence from Morningstar together with minutes are attached to this Affidavit and are also in evidence in the Del Costello deposition taken

by Anchor.) When I received this letter from Morningstar, I believed that there was a possibility that the Conference might reconsider its Decision, even though the Decision appeared to be final and binding. Otherwise, I thought there would be no need for the minutes to be corrected. I was not aware of the rules and procedures of the Conference, because I had never appeared before the Conference prior to July 19, 1977, to answer any disciplinary or other charges during the entire time that I was working for Anchor from 1973 to 1977.

When I called Morningstar and asked him to help me prepare this deletions and corrections letter, he refused such help and told me to "go to Prod", my "Communist friends in Washington" for help. Because of Morningstar's hostile attitude and his inadequate handling of my entire case, I contacted my attorney, Claude McKenzie, who had previously represented

me in a Workmen's Compensation case, and asked him if he believed anything could be done to restore my job. Mr. McKenzie advised me that he could not handle this type of case, and that it was very difficult for any lawyer who was not a specialist in Labor Law to take such a case. I then asked if he could find an attorney specializing in Labor Law who could represent me. About a week later I contacted William H. Zinman, my present counsel, asking him to take my case. Mr. Zinman at that time declined to represent me because at that time he did not know whether I had a case. I then showed Mr. Zinman Morningstar's letter and asked him for advice and counsel about my answer, which was due by September 20, 1977. He gave me certain advice concerning how I should answer, and the next day, September 14, 1977, I forwarded my answer to Duke O'Connor, President of Local 557, and

sent a copy to Arthur Morningstar. (A copy of this letter is attached to this Affidavit, and is also attached to Anchor's deposition of Del Costello). I had reason to believe that my letter would be answered and that it was possible that the Eastern Conference would give me another hearing and reconsider their Decision. However, I never received any reply from Morningstar, Duke O'Connor or the Eastern Conference.

At a Union meeting in late December, 1977, I asked Morningstar when I was going to receive an answer to my September 14 letter and he told me, "You got your answer." I replied, "What do you mean?", and he said, "That is your answer." By that I assumed that he meant that nothing would be or could be done by either him or the Eastern Conference. I then returned to Mr. Zinman, asking him if he would take my case, and he agreed

to do so after he had an opportunity to investigate the facts and do some research in the area of Labor Law, which he started in the last week of December and completed in the middle of February, 1978. Before he filed suit on March 16, 1978, I signed a Retainer Agreement on March 9, 1978, at the time that our personal arrangements were made.

I hereby swear and affirm that all of the above mentioned statements are made on the basis of my own personal knowledge, and I am competent to testify to the matters stated herein, which is exactly the same statement signed and made by me on May 17, 1981.

Signed this 22 day of July, 1981.

/s/
PHILIP DEL COSTELLO

Affiliations: Teamsters Joint Council No. 62
Eastern Conference of Teamsters

6000 Erdman Avenue, Baltimore, Maryland 21205
Phone: 301-485-9200

FREIGHT DRIVERS & HELPERS
UNION NO. 557
Affiliated with the
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS
OF AMERICA

August 19, 1977

Mr. Philip Del Costello
2204 Perry Avenue
Edgewood, Maryland 21040

EXHIBIT A

Dear Sir and Brother:

The enclosed minutes will be approved at the September 20th meeting of the Eastern Conference Joint Area Committee. If you have any additions, deletions or corrections, please put them in writing and send to me immediately.

Failure to do so, I will submit the minutes as being approved.

Fraternally yours,
/s/
Arthur C. Morningstar, Jr.
Business Representative

ACM/erb
Certified Mail
#568704 - R.R.R.
Enclosure

"INSIST ON ALL UNION DELIVERIES"

Chairman Hunter called for Case 3196:

Local 557 v. Anchor Motor Freight, Inc.
Union alleges unjust discharge of P.Del Costello; requests reinstatement with full seniority and reimbursement of all lost earnings.

Union Panel: M. Robilotto, M. Moyers, A. Hathaway, J. Arnita
Company Panel: I. Hunter, J. Montague, B. Bryan, R. Doerfier

Deniel Sandy, after introducing Elwood Feldman, Maintenance Superintendent at the Baltimore Terminal, presented the case for the Company. On June 27, 1977, Mr. Del Costello was dispatched to Albany, N.Y., with a return from St. Therese to Alexandria, Virginia. He had a 1976 tractor with 37,000 miles on it and he found several items wrong with the rig. He was in the shop with it for 3-1/2 hours, where all safety items were repaired. After the repair was finished, Mr. Del Costello asked to see the repair sheet. He checked the trailer and said he would not take it until certain items were taken care of. He was

discharged for refusing to take the truck as it had been fixed. He refused to leave the Company property so the police were called and he was escorted off. He is a very arrogant individual, working only when he wants to work. The Company introduced work records for the months of May and June.

The panel, in executive session, motion made, seconded and carried, that the work record history was relevant, but asked the Company to leave the logs so that the Committee might use them in executive session.

A. Morningstar, for Local 557, said that in the local level hearing these logs were not discussed.

Mr. Sandy said that the purpose of this evidence was to show that the grievant did not want to drive but would use every excuse to keep his rig in the shop. The records showed how he logged so that the equipment was in the

shop so much. On the 20th of June he spent 9-1/4 hours in the yard and never did get out. The piece of equipment which Mr. Del Costello refused to take out another driver did take it and delivered the load. This man has availed himself with the NLRB in a case which is pending. Since March of 1973 he has been reprimanded 70 times; discharged and suspended numerous times. He voluntarily quit when he refused to take this truck on the day in question.

Mr. Morningstar introduced his colleague from Local 557: Patrick O'Connor; Tom Sharman, the shop steward; and the grievant, P. Del Costello. Mr. Morningstar said that the grievant reported on June 27, 1977 and, in accordance with notices put out by the Company, he did properly inspect his truck. He also did shop his truck and lists were distributed showing what was needed and what was done.

Mr. Del Costello, in his own behalf, read the following report:

"On June 27, 1977, while inspecting the truck assigned to me, the Operation Superintendent, Jim Gasper, harrassed me by devoting special attention to question me for every part I found broken or worn out. After I inspected the tractor and trailer, the Terminal Manager, Rich Durand, the Superintendent for Fleet Maintenance, Mr. Omerline, and Jim Gasper used my list and inspected the truck again, and told me what they would repair and would not repair. I shopped the truck by reporting in writing on the front and back of the tractor and trailer repair card "all" the parts broken or worn out. Mr. Omerline, the Fleet Maintenance Superintendent, put a check mark by the repair he felt was needed.

The Shop Foreman did not give the work order to the welder and told the welder to

weld a couple broken parts. The welder, Tony, asked Mr. Nelson for the work order and Mr. Nelson told Tony, "Just fix what I told you." Tony did repair everything Mr. Nelson pointed out. Tony did not release the work order. He did not receive the work order. Russ, the mechanic, did get the work order and Mr.Nelson Russ, fix the parts with a check by it and don't do the rest." Russ did what he was told and did not release the work order. The Shop Foreman then called me and told me the truck was repaired.

This new breed of problems the Terminal Manager and his assistants are creating cause confusion and take away our rights to work by the safety laws. This is not only unconstitutional but against the law.

These trucks were built with safety features. When the safety features that guard against accidents break, the company refuses

to replace or repair them. Every load is different and every mechanical problem happens a different way to different people (and sometimes the same way to different people) and this safety feature guards against accidents that can happen and do happen every day at Anchor Motor Freight. These accidents injure the drivers and other employees slightly and seriously. Among other drivers, I am an example of the accidental injuries that could have been prevented. On one occasion, I requested for repair on a truck and the Terminal Manager, Safety Supervisor, Shop Superintendent, Cargo Damage Safety Supervisor, Shop Foreman - all of these important executives - looked at the parts I requested to be repaired and all of them told me the part did not need to be repaired. I went to the hospital with an injury from the part I had requested to be replaced and wasn't replaced."

Signed - Philip Del Costello.

Mr. Morningstar introduced pictures taken of the rig in question, to which the Company objected. The truck had been taken out of the shop on the 29th and dispatched with a load.

The panel in executive session, motion made, seconded and carried, that the pictures would be taken under advisement in executive session in the same manner as the logs introduced by the Company.

Mr. Morningstar said that Mr. Del Costello did not ask the Company to call the police; he did request another truck and they would not give it to him. He refused to take the truck in question out because it was unsafe.

Mr. Del Costello said that only two times had he been caught out on the road and both times it was because recapped tires came

apart.

Mr. Morningstar said that this man had every right to refuse this truck. The pictures indicate that it had not been fixed. Also, much of the equipment at the Baltimore Terminal is bad. The Company is trying to get it fixed but safety for the cargo is being stressed while the driver is being ignored. The Local Union feels that this man is being set up for objecting to poor equipment.

Chairman Hunter said that he wanted it clearly understood that consideration of the following would be excluded in executive session: the NLRB charge; the copies of reprimands issued by the Company to other employees and workman"s compensation list. However, the logs submitted by the Company and the pictures submitted by the Local Union would be reviewed.

Mr. Sandy said that there was no harrassment towards this man by the Company;

it was the other way around. The Company was inspected three times by the DOT recently and received a clean bill of health each time.

Chairman Hunter asked Mr. Del Costello if he felt at this time that he had a full and fair hearing and been able to submit through his Business Agent all relevant evidence in his behalf.

Mr. Del Costello replied, "I have nothing else to add."

Chairman Hunter then asked, "Do you feel that you have been properly represented by your local Union through Mr. Morningstar?" Del Costello replied, "Yes."

DECISION: 3196 The panel in executive session, motion made, seconded and carried, that based on evidence presented which indicated that on the day in question the equipment was shopped and reviewed thoroughly by Company

representatives, adjustments made which revealed that the equipment was road worthy and met applicable safety requirements, the refusal of P. Del Costello to take the equipment subsequent to a direct order was unjustified. Therefore, the voluntary quit of Del Costello was upheld.

Cost to Union.

Chairman Hunter called for Case 3220:

EXHIBIT C

2204 Perry Avenue
Baltimore, Maryland 21040

September 14, 1977

Mr. Duke O'Connor
Local 557
6000 Erdman Avenue
Baltimore, Maryland 21205

Dear Mr. O'Connor:

This letter is to let you know I am not satisfied with the hearing for the following reasons:

(1) I am not satisfied because representative produced no evidence through mechanics, etc. Did not produce evidence of stated ill repair of truck through two witnesses of what truck looked like.

(2) Guaranteed by Arthur Morningstar that case would be won without production of evidence on my testimony alone.

(3) Requested a right to see and hear

witnesses who testified against me and was denied that. Company's case was presented by rumors and statements. Was not allowed to question and cross-examine statements of Company witnesses. No transcript was taken of the proceedings except minutes selectively made and unavailable. No effort made by Board to examine truck.

(4) Union representative asked no questions, did not challenge introduction of fraudulent third-hand statements of Company, for only witness who testified was me. The Company had a lawyer familiar with labor law, whereas, I had an incompetent Business Agent with no knowledge of labor law, who asked no questions, who did no research, conducted no investigation other than speaking with me for approximately five

(5) minutes, never driven a tractor-trailer truck for Anchor Motor Freight, was not knowledgable (sic) in the operation of a truck, cargo, safety devices. Total time spent with Arthur Morningstar, approximately 15-20 minutes. Total time of hearing, one (1) hour; as a result, the question of whether or not I voluntarily quit depended upon the production of evidence related to the condition of the truck which required expert testimony, the nature of which would have taken days to present in order to enable the Board to decide whether the reason for my refusal to drive was based upon the unsafe condition of the vehicle or other factors. No evidence whatsoever placed before the Board to justify termination. The refusal by me to drive a defective

truck and expose myself to risk of death or serious bodily harm, as well as the general public to death or serious bodily harm, not only violated the civil and criminal laws of the United States, but in no way could be construed under the contract as an act of voluntary quit.

I am denied procedural and substantive due process of the laws.

Representative Arthur Morningstar admitted that he was not capable of representing people in front of the Board in a competent and fair manner because he had too many other duties to perform involving other union matters and that he had too many people to represent and was unable, for that reason, to conduct a thorough investigation necessary in a discharge case.

The Board itself, even if I was afforded the right to a full hearing, the questions of safety pursuant to Bureau of Motor Carrier Safety Regulations from a legal as well as factual standpoint are beyond the Board's competence to understand.

Respectfully submitted,

Philip Del Costello

PRD/jvl

cc: Mr. Arthur Morningstar
Local 557
6000 Erdman Avenue
Baltimore, Maryland 21205

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PHILIP DEL COSTELLO
.
vs.

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS
OF AMERICA, et al.

CASE NO. H-78-436
CIVIL

The Deposition of PHILIP DEL COSTELLO was taken on Wednesday, August 23, 1978, commencing at 9:45 a.m., at 36 S. Charles Street, Baltimore, Maryland, before CAPPY HALLOCK, NOTARY PUBLIC.

CAPPY HALLOCK, RPR, INC.
800 MERCANTILE BUILDING
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201
(301) 752-1733

STATE OF MARYLAND

CITY OF BALTIMORE, TO WIT:

I, CAPPY HALLOCK, A NOTARY PUBLIC OF THE STATE OF MARYLAND, CITY OF BALTIMORE, DO HEREBY CERTIFY THAT THE WITHIN-NAMED PHILIP DEL COSTELLO PERSONALLY APPEARED BEFORE ME AT THE TIME AND PLACE HEREIN SET OUT, AND AFTER HAVING BEEN DULY SWORN BY ME ACCORDING TO LAW WAS EXAMINED BY COUNSEL.

I FURTHER CERTIFY THAT THE EXAMINATION WAS RECORDED STENOGRAPHICALLY BY ME AND THIS TRANSCRIPT IS A TRUE RECORD OF THE PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NOT OF COUNSEL TO ANY OF THE PARTIES, NOR AN EMPLOYEE OF COUNSEL, NOR RELATED TO ANY OF THE PARTIES, NOR IN ANY WAY INTERESTED IN THE OUTCOME OF THIS ACTION.

AS WITNESS MY HAND AND NOTARIAL SEAL THIS _____ DAY OF _____, 1978.

_____

CAPPY HALLOCK, RPR
NOTARY PUBLIC

Your Local Union, through Mr. Morningstar, Del Costello replied, "Yes."

"You don't deny that statement in your letter of September 14th, do you?"

A No, sir.

Q As a matter of act, in your letter of September 14th, you don't argue with the minutes at all, do you?

A Yes, sir.

Q Where do you do that?

A I -- excuse me, sir. I misunderstood your question.

Q I say you don't argue with the accuracy of the minutes as they appear in your letter of September 14th?

A Yes, sir.

Q Where in your letter do you do that?

MR. ZINMAN: Why don't you take the time to read it and then answer his questions?

THE WITNESS: Okay.

A I am telling you, sir --

Q Let me interrupt you, but Mr. Feldman did testify at the hearing, didn't he?

A Yes, he did.

Q He did?

A First off, Elwood Feldman testified in place of Mr. Omullane and I said there was fraudulent third-hand information --

Q Just a minute, what your letter complains about is what you would have liked to have seen; am I correct? Your letter doesn't say that anything in those minutes is inaccurate as actually having transpired before that committee?

A Yes, sir, I do.

Q Well, tell me where it says that in your letter.

A In the minutes it says that Elwood Feldman testified on the Company's behalf. I told Arthur Morningstar when Elwood Feldman testified that he was not there, I did not talk to him. Mr. Morningstar told me, don't be ignorant like they are, keep your mouth shut --

Q But Mr. Feldman --

EXHIBIT E

STATE OF MARYLAND

CITY OF BALTIMORE, TO WIT:

I, TRIMINIE M. SHELTON, A NOTARY PUBLIC OF THE STATE OF MARYLAND, CITY OF BALTIMORE, DO HEREBY CERTIFY THAT THE WITHIN NAMED, DANIEL SANDY, PERSONALLY APPEARED BEFORE ME AT THE TIME AND PLACE HEREIN SET OUT, AND AFTER HAVING BEEN DULY SWORN BY ME ACCORDING TO LAW WAS EXAMINED BY COUNSEL.

I FURTHER CERTIFY THAT THE EXAMINATION WAS RECORDED STENOGRAPHICALLY BY ME AND THIS TRANSCRIPT IS A TRUE RECORD OF THE PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NOT OF COUNSEL TO ANY OF THE PARTIES, NOR AN EMPLOYEE OF COUNSEL, NOR RELATED TO ANY OF THE PARTIES, NOR IN ANY WAY INTERESTED IN THE OUTCOME OF THIS ACTION.

AS WITNESS MY HAND AND NOTARIAL SEAL THIS 23 DAY OF January, 1980.

/s/
TRIMINIE M. SHELTON,
NOTARY PUBLIC

Q How many people are in the Eastern Conference?

A I would say management and labor, the roster would be about 30 of each.

Q And has the membership changed much since 1963?

A Yes, it changes from time to time, local union elections and Company personnel being --

Q Natural attrition and change?

A Yes.

Q But otherwise you are familiar with most of the representatives throughout the area, is that correct?

A I am

Q Now, how long has Mr. Morningstar been a member of this Conference, if you know?

A I think he was first elected as a business agent in 1970.

Q In his capacity as a representative of

the Union he is also a member of this Conference, is that right?

A Yes, sir.

Q He sits on cases and also tries cases?

A That is correct.

Q You also try cases for Anchor Motor Freight before the same body?

A Yes, sir.

Q And when Anchor Motor Freight is not involved in a dispute you sit on the case, on cases involving other companies?

A I do.

Q You could sit on a case involving local 557 as long as Anchor wasn't involved?

A That is correct.

Q And conversely, your opposite number, Mr. Morningstar, could also sit on cases involving Anchor Motor Freight as long as 557 wasn't involved, one of the disputants?

A That is right.

Q Now, are there any other matters besides labor disputes or grievances that are taken up by the Eastern Conference?

A No, sir, it is solely constituted to adjudicate labor disputes between the parties.

Q Okay, and have you ever sat on a panel together with Mr. Morningstar and decided a discharge case?

MR. GOLDFARB: For the record, I am going to object to the entire line of questioning. Go ahead and answer.

THE WITNESS: Yes, I have sat on panels with him where it was another local and another company.

Q I understand.

A Yes.

Q Now, you indicated that, of course, you being excluded from sitting on cases that involved Anchor, I take it that that is a rule, isn't it, or procedure?

A No, it is a written rule.

Q It is not in this Exhibit 1?

A No, sir.

Q Where would that be, sir?

A There is a set of rules that govern the Conference. They have been reduced to writing and they are a matter of record.

Q Where are they kept?

A Each party is given copies of it.

Q Do you have a copy of those rules?

A I don't have it with me but can furnish you a copy.

Q I would appreciate it if you would through Mr. Goldfarb. They have their headquarters in Bethesda, Maryland.

A The Eastern Conference does, yes, sir.

Q Do they have copies there, do you know?

A Yes, sir.

Q I think you have explained essentially the function of it. This Joint Committee, I take it that when a matter comes before them

and they have to decide up or down on a discharge case, it is a majority vote?

A Yes.

Q Is this discharge either way final and binding?

A It is final and binding.

Q There is no appeal from that, is that correct?

A There is no appeal.

Q Are there written rules and regulations promulgated by the eastern Conference with respect to the actual conduct of the hearing itself?

A It is a very sophisticated, very formalized type of a hearing. They are.

Q Is this conduct, manner by which a hearing is conducted, governed by a whole set of what you have described as sophisticated rules and regulations that are reduced to writing?

A It is better conducted than what a lot of your court procedures are.

Q Again, you have a copy of these rules?

A Yes, I said I would furnish them to you.

Q You are talking about the same thing?

A They are the same thing.

Q Do you have any independent recollection of what these rules are? If I were to ask some questions for present purposes, for example, if a discharge case comes before the Eastern Conference, what are the rules with respect to who has the burden of proof?

A The Company would be the moving party and they would go first and it would be incumbent upon the Company to prove --

Q I see, and that, to the best of your recollection, is reduced to --

A No, I don't think that that is reduced to writing. I think it is a matter of

principle, a matter of arbitration.

Q The Union has a right thereafter to answer, is that correct, to respond?

A They have a right to interrogate. The Company moves first with the right to rebut, then the Union makes their presentation, then both parties have rebuttal, and then both parties are subjected to questions by one another and by the ten panel members.

Q Are there rules and regulations that permit each party to cross-examine the witnesses of the other party?

A Yes.

Q Then the parties are not precluded from cross-examining one another?

A There is cross-examination.

Q I see, and the panel members before whom the dispute comes also have the right to cross-examine?

A They do.

Q What are the rules and regulations pertaining to the introduction of evidence with respect to witnesses?

A They do accept notarized statements. They will not accept a statement that isn't notarized, and the customary practice of bringing witnesses.

Q If I may characterize it -- and if I am wrong, you correct me -- if a witness wants to relate first-hand knowledge, if you want to relate first-hand knowledge of events in order to prove something, you either have to bring a witness or if you haven't got the witness you have to take a notarized statement of somebody else under oath?

A Of a witness, yes.

Q You can't introduce hearsay testimony of a witness who isn't there?

A That is correct.

Q Now, with respect, Mr. Sandy, to things

that are not -- well, it is not testimonial evidence, it is documentary evidence, proof of things, such as repair orders, letters, things of that nature, can you introduce that documentary evidence without having an affidavit?

A Yes, sir.

Q From a practical standpoint, I am talking about, letters of a non-testimonial nature?

A Either party has the right in their discovery to ask for any documents pertaining to any information that they would want prior to coming to the committee hearing.

Q Okay. Now, in the event that either one or both parties -- what are the rules and regulations with respect to discharge? If a person is discharged for whatever reason from a company, under the contract or in accordance with the procedure, the shop stewart, or whoever it is, tries to get the man back informally, is that correct?

A That is correct.

Q By a company level hearing?

A Yes.

Q At that company level hearing, does that involve the informal disclosure by the company to the shop foreman of the reasons for the discharge?

A You mean the shop steward or foreman?

Q I'm sorry, shop steward?

A Yes, they have a level in the grievance procedure, the channels as outlined. There is the presentation of grievance and a hearing.

Q Okay.

A On an informal basis.

Q I take it that from a practical standpoint -- The representative of the union who would be at that company level hearing would be the same man that would ultimately represent the person if the case went to the

Eastern Conference, if he didn't get back to work, is that right?

A That is correct.

Q Now, at that point, when you have the company level hearing, does the company disclose all of the pertinent information to the union?

A They must.

MR. GOLDFARB: Excuse me, are you talking generally now?

MR. ZINMAN: I am talking under this contract. I am talking about under this contract.

MR. GOLDFARB: But not this specific grievance.

MR. ZINMAN: First generally.

MR. GOLDBARB: All right, I just want to interpose an objection to this line of questioning. You may answer.

MR. ZINMAN: I will narrow this and

you can object.

BY MR. ZINMAN:

Q As of June 27, 1977, was the company, was Anchor Motor Freight in a discharge case under this contract, Exhibit I, compelled to disclose to the union representative at the Company level hearing all of its relevant information in support of the discharge?

A Yes, sir, and they frown on any withholding of any evidence, and if the evidence has not been adduced at that local hearing, it can be brought up at the Conference level. You can state that so and so was involved in it, and that there will be an affidavit at the hearing. You don't necessarily have to have all parties present at the local hearing with the shop steward, but the withholding of information is a serious sin.

Q Is this reduced to writing or is this a matter of custom?

A It is a matter of custom.

Q I see, so that what you are saying, then, is that in a discharge case the custom of the Conference is to require full disclosure of all the Company's statements and testimony and its case against the employees prior to the hearing before the Conference?

MR. GOLDFARB: I object. He didn't say that. He said it didn't have to be in verified form.

MR. ZINMAN: Excuse me, Mr. Goldfarb, he is a sophisticated witness.

MR. GOLDFARB: You have not accurately given it back to him the way he testified andI don't think you mean to be tricky, so I am going to excuse you this time.

YOU MAY ANSWER IF YOU UNDERSTAND THE QUESTION.

BY MR. ZINMAN:

Q What I am asking you is, is it the

custom of the Conference to require full disclosure of the basic case of the Company. I am not talking about the little details, but the basic case of the Company against the employee prior to the hearing before the Eastern Conference?

A It isn't unilateral. Both parties are required to bring their evidence. That is, you couldn't bring pictures of an accident at the hearing that you hadn't shown to the union prior to coming to the hearing.

Q If full disclosure has not been made by one or both sides, what would the Eastern Conference do when the case came up?

A Generally they are admonitions, admonishments about the party not bringing it up, and it is -- goes to the question of credibility of the party that doesn't bring it up.

Q Oh, but if the party did not make

disclosure as you have indicated, would the party who was surprised win its case or lose or what?

A What would happen is this. Let's say that I would wait to the last minute to bring the picture of the accident and say here is thepicture of the bridge that was hit by Bill Zinman on such and such a date. If it hadn't been presented to the local prior to the hearing, it would not be admissible and I couldn't present it.

Q I see, is this a rule?

A Very strict rule.

Q Is this a written rule?

A I don't know whether it is written, I haven't seen the rules. Having lived with them every day, I haven't seen them.

Q But to the best of your recollection?

A It is a rule, strictly adhered to.

Q It is a rule, so they would exercise

the right to exclude evidence, essential evidence, not Mickey Mouse things, but essential evidence important to the case if it wasn't previously disclosed to the other side, or alternatively, they would consider the other side to lack credibility; is that the sense of it?

A Lack credibility and it would not be admissible.

Q Not admissible. Now, in the event that one side introduces evidence not previously disclosed of a very important nature, would the other side have the right under the rules and regulations of the Eastern Conference to request a postponement on grounds of surprise?

MR. GOLDFARB: I am going to object to this entire line of questioning because this is in a general area -- let me finish. You have not given him any specific case, but I

am going to let the witness answer if he knows.

MR. ZINMAN: All my questions are directed in time in this area to June 27, 1977.

MR. GOLDFARB: But you are not talking about a specific grievance hearing, are you?

MR. ZINMAN: I am talking about procedures. Before I can ask him questions, I have got to know about procedure.

MR. GOLDFARB: But you are talking about general procedure as may apply to any particular grievance?

MR. ZINMAN: Procedure applying to discharge cases as of June 27, 1977.

MR. GOLDFARB: To any discharge case as of --

MR. ZINMAN: Any discharge case.

MR. GOLDFARB: Object to the line of questioning; answer if you know.

THE WITNESS: I have stated that any party bringing information that hadn't been previously divulged to the other party, would bar -- it would be a bar before the committee, and the other party would object immediately.

BY MR. ZINMAN:

Q Well, in the event that the matter was introduced but the Eastern Conference nevertheless decided to receive the evidence, could the party against whom the evidence was introduced ask for a postponement on grounds of surprise?

MR. YALLER: I will object, speculative.

A That would be presumptive and I have never seen it in my years where it would be admissible.

Q Let me ask you this with respect to postponements, after a case is commenced are there any reasons that the Eastern Conference

will permit a postponement other than the sickness of parties or --

A Either side has a right to postponement.

Q I am talking about the middle of the case. Obviously they could postpone it before.

A I don't recall it before.

Q All right, they would have a right to seek more information if somebody had told them there was other information.

A ? They could recess the committee to obtain this information.

Q Would the committee do that on its own motion or would that be done --

A They would do it on their own.

Q If they felt, in other words --

A That it was pertinent enough that --

Q The record wasn't complete, they had to have more evidence to decide that particular case?

A Yes.

Q With respect to the case of Philip Del Costello, Mr. Sandy, I take it that ultimately you represented Anchor Motor Freight in prosecuting the discharge?

MR. YALLER: For the record -- and not to interrupt every time you ask a question, I'm sure you are going to call it a discharge again -- let me make objection to the use of the word discharge, standing objection.

BY MR. ZINMAN:

Q That is correct, you handled the case for the Company?

A I processed the case at the Eastern Conference for Anchor Motor Freight, yes.

Q And Arthur Morningstar, business agent, represented the grievant, Mr. Del Costello, is that correct?

A I believe he had two other business agents. I think he had Mr. O'Connor who was

the president of the local, and I think he had a Mr. Tom Sharman.

Q They were present, but wasn't it Morningstar who had the responsibility of handling the case?

A I don't know upon whose shoulders it falls. He was the one who presented the case in conjunction with the other gentlemen that were there.

Q Well, wasn't it Mr. Morningstar that argued the case?

A Yes, he presented the case.

Q He presented it, and Mr. Sharman didn't say anything at all, did he?

A I don't remember, I don't remember.

Q Mr. O'Connor's role in the case, wasn't it limited simply to telling about the number of Workmen's Compensation cases and injuries which occurred at Anchor Motor Freight, isn't that all he said?

A I don't remember as to what he said. I do know they were present.

Q I understand that. In any case, after Mr, Del Costello was discharged on the 27th of June of 1977 -- excuse me, terminated, to make Mr. Yaller happy or whatever -- whether we call it termination or discharge, it occurred on the 27th. Following that there was a company level hearing approximately a week later at Anchor Motor Freight on July 6 or 7, 1977?

A I believe there was.

Q Did you attend that company level hearing?

A I don't believe I did.

Q In fact, you weren't on the premises at the time of the termination or discharge, were you?

A Not on that hearing. On the July 6 hearing, I wasn't present.

Q Now, how long after the termination of Del Costello on June 27 was it that you first became aware of it through, I take it, representatives of Anchor?

A I was aware of it on or about the 27th or 28th. I was out of town, but I did have conversation with them concerning it.

Q With whom did you speak?

A Mr. Feldman.

Q Elwood Feldman?

A Yes, sir.

Q When was that?

A On the 27th or 28th, one of those days.

Q Where were you at the time?

A I was in Detroit.

Q You called in to the --

A No, sir, they called me.

Q Did Mr. Feldman call you?

A I don't know that it was Mr. Feldman

that called me. There were other matters discussed, and at that time they switched me over and I did have discussion with Mr. Feldman.

Q What did he tell you at that time?

A He related the fact that Mr. Del Costello had been given a piece of equipment and that he had found fault with it.

Q Did he --

A He related the facts to me as to what transpired that day relative to Mr. Del Costello.

Q Did he indicate to you at that time that he was a witness to it, or had somebody else told him about it, or what?

A He didn't.

Q He didn't go into that?

A I didn't question him on that.

Q Okay, and you know approximately when you received a call from Mr. Feldman?

A It was in the evening of the 27th.

Q Early, late evening?

A No, I would say about 9:00 or 10:00 at night.

Q Did you speak with anybody else at Anchor besides Feldman at that particular time, Mr. Sandy?

A I don't believe I did.

Q I take it this was a routine call that you made on general business, is that right?

A Yes, sir.

Q Did you have occasion at that time to speak with Mr. Omullane?

A I don't believe I did.

Q Did you talk to Mr. Gasper at that time?

A No, sir.

Q Did you speak with Mr. Durand at that time?

A I had conversation with Mr. Durand. I don't know what the subject matter was, but it

was Mr. Feldman who apprised me in the area of Mr. Del Costello.

Q Mr. Sandy, do you have anything at all to do with supervising or overseeing the operation of the function of the business itself in any of its departments other than -- I am not talking about labor relations now.

A Strictly labor relations.

Q That would involve, obviously, hiring and terminating people, or discharging?

A I do very little hiring. I went through a period of time where I did quite a bit of interviewing, but the work schedule became too heavy and I don't get involved in the hiring.

Q But since this would be a termination you would be interested in discussing this, is that correct?

A I do make recommendations relative to the severance, the severing of employees with

their employment, yes.

Q Do you recall, when you discussed this with Mr. Feldman, were you being asked whether Mr. Del Costello should be terminated, or had the fact of termination already occurred?

A I think the determination to sever him, that he had volunttarily quit his job, had been made before that.

Q I see. Now, did you have any further discussion with Mr. Feldman other than what you have related to us in your testimony here at that time? I am talking about when he called you, now.

A No.

Q Were there other matters that you discussed with him involving your area of interest?

A I don't recall of any.

Q Now Mr. Sandy, did someone from the Company prepare what has been described as a

case report for you involving the Del Costello termination or discharge after June 27, 1977?

A I think Mr. Gasper compiled the facts. I had had conversation with him prior to going to the conference as to what information -- number one, as to what had transpired at the local hearing and what I wanted and the write-up that would go to the Conference. I had discussion with Mr. Feldman, Mr. Durand, Mr. Omullane. I covered that with all of the Local people as to what had transpired prior to the presentation going to the Conference.

Q I see. Now, I take it that approximately -- I am not holding you to the date, but approximately a week went by from the date of the termination or discharge to the date of the company level hearing, is that right?

A Yes.

Q And at the company level hearing, do you know who was present?

A No, sir, I don't.

Q But you did discuss this company level hearing, did you not?

A I discussed it both before and after. I asked them to make sure that they found out as to who did drive the truck, check his logs, see if he had encountered any problems with the piece of equipment, et cetera.

A You don't know if Mr. Gasper was present then or not at the company level hearing?

A No, sir.

Q Or Mr. Durand, Mr. --

A Feldman? I don't know who comprised the local level hearing.

A Okay. After discussing this matter with Mr. Gasper, do you recall discussing the company level hearing with Gasper shortly after it occurred?

A Yes, sir.

Q Did you discuss this matter with Mr. Gasper personally, over the phone or both?

A Personally, and with Mr. Omullane and Mr. Feldman in person. Both.

Q Okay, now, were you satisfied after you had those discussions that the company at that point in time had disclosed to the union all the essential and pertinent information that they had justifying the termination or discharge of Mr. Del Costello?

MR. GOLDFARB: Object to the form of the question. You can answer if you know.

A I told them to make available to the union everything that we had, and not to withhold anything.

Q Do you know what they made available at that time?

A No, I don't know. I know the shop, I know they gave them -- Mr. Aiken had taken a piece of equipment and they showed Mr. Aiken's

logs, et cetera.

Q You are talking about the driver, for the record, who received the rig that Mr. Del Costello had on the 29th or the next day, whenever it was?

A Yes.

Q Were they also given the opportunity to see statements made by Mr. Omullane? I say they, I am talking about the union representatives?

A The union representatives had been told that Mr. Omullane had made certain assertions as to what happened, et cetera -- as to whether or not they had -- they don't have a formalized affidavit or -- at the local hearing, but they would have the information, what Mr. Omullane's conversation had been. This is generally pretty well detailed as to what the conversations are between the people.

Q You don't know if Mr. Gasper was

present then or not at the company level hearing?

A No, sir.

Q Or Mr. Durand, Mr. -- •

A Feldman? I don't know who comprised the local level hearing.

Q I see. Now, do you know when the formalized statement from Mr. Omullane was taken? It was taken by Gasper, wasn't it?

A I don't remember who actually took it. I know that Mr. Gasper was --

Q Didn't he prepare the case report?

A He had the secretary type the case, yes.

Q I take it he dictated the case to the secretary?

A He had discussed with me as to what information I wanted reduced to writing to assist me in my presentation.

Q Do you know the date that this case

report was typed up?

A No, sir, I don't know.

Q Would it have been after the company level hearing or before?

A Yes, after.

Q Do you know how long after?

A No, sir, I don't.

Q Do you know whether or not the case report contained a statement signed by Mr. Omullane?

A No, sir, I don't.

Q Wasn't this case report eventually presented to you so that you could present certain evidence --

A Yes, sir.

Q -- at the Eastern Conference?

A Yes, sir.

Q In going through that case report were there a number of documents attached to it?

A Yes, sir.

Q Do you have that case report today in your personal papers?

A I don't have it no. I wouldn't have any need of it. Once my presentation is made to the committee and so forth, then it is sent back to the terminal. It don't have any sentimental value -- I made a presentation. In the period of a year I may make a hundred.

Q Each time that you make a presentation, is there a case report typed up for you?

A Absolutely.

Q As extensive as the case report involving the termination of Del Costello?

A I would say the same as, if not more so.

Q I see. Does the case report have the title of the case as well as the number?

A I have a format that I demand that they use.

Q What is that format, sir?

A The format generally before the Eastern Conference, and it is -- it also describes what the location is, Baltimore, and Local Union 557, and then the case number is there, and then I have them give me the grievant, his name, his address, his date of starting with the company, the day he was severed. I have a copy of the grievance typed so I can read it very easily. Then I demand that they give me a statement in the case.

Q You also indicated the case number is on there, is that correct?

A To the right, in --

Q Just like in court, a court case?

A One of the bad things I picked up by hanging around the legal fraternity.

Q Well, this --

A It facilitates in knowing what the case number is.

Q When is this case number assigned by the Eastern Conference?

A When the case goes -- the local union sends a summary form to the Conference and the Conference at that time gives it a number. Then they send us an agenda.

Q When in point of time would that be?

A Generally it has to be in the hands of the -- about ten days before the actual hearing.

Q Ten days before the actual hearing in this case would have been on July 9, if July 19 was the date of the hearing.

A I think there is a deadline when they have to have the cases in, and then we get the agenda some two or three days later.

Q So, in other words, it would be, you say, ten days before the scheduled hearing before the Eastern Conference?

A No, a lot of times it fluctuates

between seven and eight days, or on a discharge case it can automatically come on a supplemental at any time.

Q Who makes this up?

A The Eastern Conference of Teamsters. They have a co-secretary who does the handling of the correspondence.

Q This case number would not have been assigned till about anywhere from five to eight days before the actual hearing?

A That is correct.

Q Now, when you received this case report involving Mr. Del Costello from, I take it, Mr. Gasper, did it list all of the people who had first-hand knowledge of the facts and circumstances surrounding the Del Costello termination or discharge?

MR. GOLDFARB: Just a minute. You have a copy of the report you are talking about?

MR. ZINMAN: Yes.

MR. GOLDFARB: Then why don't you show it to the witness instead of playing games with him? Hand it to him so he can look at it and then he will answer the questions. If you have the copy of the report, I am going to instruct him not to answer your question.

MR. ZINMAN: The case report is not evidence.

MR. GOLDFARB: I don't care what it is. I am going to say something for this record. You are asking him questions about a document that you have in your possession. Now, before he answers any more questions about that document, I am going to ask you to show it to him so that he can answer these questions from the document.

MR. ZINMAN: I am going to ask him, Mr. Goldfarb, if he can remember what is in the document without my showing it to him.

MR. GOLDFARB: Yes, then I am going

to say the document speaks for itself and you have got it, and I am going to instruct him not to answer if you are playing games --

MR. ZINMAN: I am not playing games --

MR. GOLDFARB: You sure are.

MR. ZINMAN: I don't have to introduce a document you make as your evidence.

MR. GOLDFARB: I am not asking you to introduce it, I am asking you to let him look at it while you question him about it, as long as you have got it.

MR. ZINMAN: I have no objection to letting him look at it.

MR. GOLDFARB: Then let him look at it. Then if you want to ask him questions about it, fine. Do you have this?

MR. YALLER: No.

MR. SATTER: No.

MR. GOLDFARB: Maybe we can have some copies made of that so they can have a copy of

it.

MR. YALLER: Off the record.

(DISCUSSION OFF THE RECORD.)

BY MR. ZINMAN:

Q Did the case report reveal the names of any people who have first-hand knowledge of the facts and circumstances surrounding the Del Costello termination?

MR. GOLDFARB: Object, there is a document speaking for itself, but answer if you know.

MR. ZINMAN: The document isn't in evidence.

MR. GOLDFARB: Go ahead.

THE WITNESS: The information was brought out as to -- that Mr. Feldman and Mr. Omullane were present during the day. I think -- I don't recall what I stated, but I am certain I would have covered that area.

BY MR. ZINMAN:

Q Well, who were the people who had first-hand knowledge of facts and circumstances surrounding the termination of Del Costello on the 27th of June?

A Mr. Omullane, Mr. Durand, Mr. Feldman and Mr. Gasper.

Q Did you speak with any of these people before the hearing?

A What hearing?

Q The hearing before the Eastern Conference on July 19, 1977?

A Yes, sir.

Q Did you speak with Omullane?

A Yes, sir.

Q That is John Omullane?

A Yes.

Q Approximately when was that?

A It was prior to going to the hearing in Atlantic City.

Q Do you have an independent recollection

--

A Yes, sir, she has.

Q When she has notarized things for you, she has stamped it with her seal?

MR. GOLDFARB: Stamps or imprint, what kind of a seal are we talking about?

MR. ZINMAN: Notarial seal.

MR. GOLDFARB: Embossed on the paper rather than rubber stamp?

MR. ZINMAN: It can be both. It can be that or it can be stamped, both ways.

THE WITNESS: I don't remember whether she did. I am a notary and I have the stamp, and I put the stamp if and when I am called upon. Somebody wants -- they sell an automobile and they want me to notarize it.

MR. GOLDFARB: Off the record.

(DISCUSSION OFF THE RECORD.)

BY MR. ZINMAN:

Q You said that you introduced the

Plaintiff's Exhibit Number 4 which was the Omullane statement to the --

A Panel.

Q -- to the panel. Before this statement was introduced the Omullane statement was introduced, do you have any knowledge whether it was ever shown to Mr. Morningstar at the company level hearing or afterwards?

A I don't know. I do know this, that the subject to Mr. Omullane's conversation with the grievant was discussed at the local level.

Q I understand that, but I am asking you now --

A No, I, I don't know whether it was or not.

Q Prior to your introduction of this statement into testimony and its presentation to the panel, did you show this statement to Mr. Morningstar?

A No, he was apprised of the contents of the statement.

Q Well, did you see the statement.

A I don't remember whether he did or not.

Q Did you give it to him?

A I would have given it to him at the committee hearings, yes.

Q At the time you sought to introduce it, did he object to its introduction?

A I don't know whether he did or not. He did object to the introduction of Aiken's log and I objected to the pictures, and the committee said they would take --

Q But there is no reference whatsoever --

I would like to introduce at this point the decision by the Eastern Conference. I will have you identify it.

MR. GOLDFARB: Have it marked, will

you?

MR. ZINMAN: As Exhibit 5. If you can't read this too well, we will make a better one.

(SANDY DEPOSITION, PLAINTIFF'S EXHIBIT NUMBER 5, WAS MARKED FOR IDENTIFICATION.)

BY MR. ZINMAN:

Q Exhibit Number 5, Mr. Sandy, purports to be the minutes of the decision of the Eastern Conference in the Del Costello case, is that correct?

A That is what it purports, yes.

Q You received this before, did you not?

A Before when?

Q That is, you received a copy of this decision?

A What you do is you receive it and at the next meeting of the Conference you will find in the minutes that they are either approved or disapproved by the panel.

Q To your knowledge, have these minutes been approved?

A They were approved by the committee.

Q I take it that in your records you have a copy of these minutes, is that right?

A Yes, sir, I do.

Q Your own personal records?

A Yes, sir.

Q Now, the records reveal all of the documentary evidence to which you referred in your earlier testimony, namely, the introduction of the logs of Mr. Del Costello, the trip report of Mr. Aiken -- or at least you made mention of it, I don't know that it refers to the Aiken trip report. Take a look, I don't want to misquote you. Does it refer to the introduction of Mr. Aiken's -- the trip assigned to Mr. Aiken, documentary evidence of that?

A Not in that document.

Q So the only mention of Aiken is here was in your opening remarks to the effect that when Mr. Del Costello refused to take the truck, it was assigned to another driver the next day, is that right, essentially? I am quoting now the minutes.

A Are you saying what the minutes reflect or what I stated?

Q I am saying what the minutes reflected.

A Yes.

Q Okay. There is no reference in these minutes whatsoever to the -- that is Exhibit 5 -- to the introduction of the Omullane statement, isn't that correct?

MR. GOLDFARB: I object, let the minutes speak for themselves. Answer if you know, go ahead, it is a document that talks and it says what it says. But all right. If he knows, so we can get on with it.

THE WITNESS: Just a second. Your question was what?

MR. ZINMAN: Read back the question.

(THE RECORD WAS READ AS REQUESTED.)

THE WITNESS: My answer would be that although the minutes don't reflect it, my presentation does.

BY MR. ZINMAN:

Q All right. In other words, your independent recollection was that you nevertheless still introduced the Omullane statement, right?

A My statement is that I did so state.

MR. GOLDFARB: It was part of Exhibit D of your statement of the case. Is that what you said?

THE WITNESS: I said that I stated that Exhibit D is a statement from Mr. Omullane.

BY MR. ZINMAN:

Q All right. In other words, your independent recollection was that you nevertheless still introduced the Omullane statement, right?

A My statement is that I did so state.

MR. GOLDFARB: It was part of Exhibit D of your statement of the case. Is that what you said?

THE WITNESS: I said that I stated that Exhibit D is a statement from Mr. Omullane.

BY MR. ZINMAN:

Q Now, Mr. Morningstar objected to the introduction of -- I think you testified that Mr. Morningstar objected to the introduction of logs, certain logs of Mr. Del Costello or work background that you introduced of Mr. Del Costello for the months of May and June of 1977, is that correct?

A No, sir, Mr. Morningstar objected to the logs, stating that they weren't discussed

Q Didn't you introduce logs, Mr. Del Costello's logs, for the months of May, certain days in May and June?

A No. The company introduced work records for the months of May and June.

Q That is what I am talking about.

A If you are saying those are logs --

Q All right, work records, logs, whatever they were, work records for May and June?

A Right.

Q And Morningstar objected to the introduction of those work records, isn't that correct?

A I don't know. It states in there that Morningstar objected that at the local level hearing these logs weren't discussed. I don't know whether he, like yourself, is interpreting the man's work record as logs, or in between there did I produce Mr. Aiken's logs. I don't know which he is talking about.

Q But in any case did he state the basis for his objection?

A Yes.

Q What was the basis?

A That they weren't presented at the local hearing.

Q Was there any other statement in support of his reason for objection besides that?

A No, sir, he said in the local level hearings these logs were not discussed.

Q But he did not object to the Omullane statement, is that correct?

A I don't remember. The minutes don't reflect it, so I wouldn't know. The minutes are not a word by word, verbatim transaction of what happened.

Q Do you have any independent recollection? You said that you showed him this statement prior to the hearing or at the hearing, this Omullane statement?

A Yes, as you would pass out your documents. You extend the courtesies.

MR. GOLDFARB: Are you going to whip this much more? It has been beaten into the ground. You must bring the IRS agents in this room. When they come in to make an audit, they must bring the IRS agents in here. It is getting awfully uncomfortable with the heat.

BY MR. ZINMAN:

Q After you introduced Elwood Feldman to the panel, did you have an opportunity to testify?

A I don't remember, but once the introduction is made the matter becomes that if anybody wants to ask him a question, once you introduce him he is open for questioning.

Q Did he relate any of the facts or circumstances?

A I don't remember whether he did or not.

Q What did you have him there for?

A If there were questions about maintenance, same as a lot of people don't know anything about law but they are lawyers.

Q That is right, you and Shakespeare. In any case then, basically, the case consisted ---- the main part of the case was the introduction of the Omullane statement and the documentary evidence, wasn't that the whole case?

MR. GOLDFARB: Was that the whole case? You said the main part and then it was the whole case.

MR. ZINMAN: Strike that.

THE WITNESS: What was my main thrust? If I knew that, I wouldn't be vice-president of the company.

BY MR. ZINMAN:

Q What did Mr. Omullane or what did Mr. Feldman -- was he asked any questions?

A I don't remember that he was.

Q Did he participate in any way that you can recall?

A I don't remember. If there was an interpretation on those work records that you have, he would have to give it, not I.

Q When you say work records, I am a little confused. Are you talking about logs of Mr. Del Costello?

A I can read logs. I don't want to get involved in the maintenance record.

Q I am not talking about maintenance records. You say Mr. Del Costello's work records were introduced for the month of May and June, 1977. What do you mean, talking about logs?

A I can interpret those, the work records that you have the copy of.

Q I think you indicated that essentially on the 20th of June he sat on the clock

for 9 and a half hours. Was that what you told --

A I don't remember. Where are you reading from, the minutes?

MR. GOLDFARB: Give me a copy of the

A Yes, sir.

Q And did you meet with him the day before, with Mr. Morningstar?

A Yes, sir.

Q And when was the hearing held? Was it in July of 1977?

A July 19th.

Q July 19th?

A Yes, sir.

Q 1977?

A Yes, sir.

Q At Atlantic City?

A Yes, sir.

Q At Atlantic City?

A Yes, sir.

Q In the Howard Johnson's Regency Hotel?

A Yes, sir.

Q Were you present at the hearing?

A Yes, sir.

Q Can you describe the hearing room? Did it look like a conference room?

A Yes, sir.

Q And was there a table with the committee, the grievance committee, seated at the table?

A Yes, sir.

Q Do you remember how many people were seated at that table, if you can remember?

A No, sir.

Q Well, do you know whether some of those people were union representatives and some were employer representatives?

A I was told they were.

Q Did you know any of them?

A No, sir.

Q And who was with you besides Mr. Morningstar?

A Mr. Duke O'Connor and Tom Sharman.

Q And who is Mr. Sharman?

A Chief Shop Steward.

Q And who is Duke O'Connor?

A President of Local 557.

MR. ZINMAN: For the record, that is Patrick O'Connor.

Q And Mr. Morningstar?

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A Yes, sir.

Q And who was there on behalf of Anchor Motor Freight?

A Dan Sandy and Elwood Feldman

MR. YALLER: Could you spell the second name?

THE WITNESS: Mr. Elwood Feldman.

MR. YALLER: How do you spell his last name?

THE WITNESS: F E L D M A N.

BY MR. GOLDFARB:

Q Now, who did the talking on your behalf?

A Arthur Morningstar.

Q And did you have an opportunity to say something?

A Yes, sir.

Q Anybody stop you or prevent you from talking?

A Yes, sir.

Q Who?

A Arthur Morningstar.

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Q How did he do that?

A He told me, don't be ignorant and keep your mouth shut.

Q Did you keep your mouth shut?

A Yes, sir.

Q Didn't you read a prepared statement?

A Yes, sir.

Q Then you didn't keep your mouth shut, did you?

A I was instructed I could read the statement.

Q Did anybody else from the union do any talking?

A Yes, sir.

Q Who?

A Duke O'Connor.

Q And did he talk on your behalf?

A Yes, sir.

Q And did anybody else do any talking?

A Yes, sir.

Q Who?

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A Arthur Morningstar.

Q And did he talk on your behalf?

A Yes, sir.

Q And who talked for the company?

A Mr. Elwood Feldman and Dan Sandy.

Q Do you recall at the end of that hearing you were asked if you had anything to add to it?

A Yes, sir.

Q And what did you say?

A I said I will make the decision when I hear your decision.

Q Were you asked before the hearing recessed if you wanted to add anything to the case, to the evidence?

A No, sir.

Q You weren't asked that?

A Excuse me, I don't understand, sir.

Q I said were you asked near the conclusion of that hearing whether you wanted to add anything to it, any more than what was said?

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A No, sir.

Q You were not asked that?

A No, sir.

Q Do you recall being asked if you had been properly represented by your union?

A No, sir.

Q Did you ever see the minutes of that meeting?

A Yes, sir.

Q When did you see those minutes?

A I believe it was on August the 19th.

Q How did you get a copy of them?

A They were sent to me in the mail.

Q And when they were sent to you in the mail, did they come from the union?

A Yes, sir.

Q And did they ask you if you had any objection to the minutes.

A In the letter, yes, sir.

Q Did you say you had any objections to the minutes?

A I called Arthur Morningstar and explained --

Also have a letter sent to the National Labor Relations Board referring to Defendant's Exhibit 53.

A Yes, sir.

Q And that letter is signed by Stephen R. Early, is that correct?

A Yes, sir.

Q Who is Mr. Early, is he a lawyer?

A Yes, sir.

Q And who is he associated with?

A P.R.O.D., Washington, D.C.

MR. ZINMAN: Pardon me, Mr. Goldfarb, may I take off for about 30 seconds?

MR. GOLDFARB: Yes, go ahead.

(DISCUSSION OFF THE RECORD.)

(SHORT RECESS.)

BY MR. GOLDFARB:

Q I will show you, Mr. Del Costello,

Defendant Anchor's Exhibit 38 which is a letter from Mr. Morningstar to you forwarding a copy of the minutes, and in the letter he says, "The enclosed minutes will be approved at the September 20th meeting of the Eastern Conference Joint Area Committee. 74
If you have any additions, deletions or corrections, please put them in writing and send them to me immediately. Failure to do so, I will submit the minutes as being approved."

Now, can you tell me whether you communicated with him in writing in response to this letter?

A Yes, sir.

Q And which letter is that? Can you show me which letter you wrote to him in reply to this?

A Yes, sir.

Q And that is Defendant Anchor Exhibit 39, is that correct?

A Yes, sir.

Q All right, will you hold that for a minute?

Now, in the letter dated September 14th, 1977 -- would you take a look at it and I just want you to answer these questions yes or no, and we will move on -- you don't deny the statement made, "Do you feel that you have been properly represented by your local union through Mr. Morningstar, Del Costello replied, "Yes", You don't deny that statement in your letter of September 14th, do you?

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A No, sir.

Q As a matter of fact, in your letter of September 14th, you don't argue with the minutes at all, do you?

A Yes, sir.

Q Where do you do that?

A I -- excuse me, sir. I misunderstood

your question.

Q I say you don't argue with the accuracy of the minutes as they appear in your letter of September 14th?

A Yes, sir.

Q Where in your letter do you do that?

MR. ZINMAN: Why don't you take the time to read it and then answer his questions?

A First off, Elwood Feldman testified in place of Mr. Omerline, and I said there was a fraudulent third-hand information --

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Q Just a minute, what your letter complains about is what you would have liked to have seen, am I correct? Your letter doesn't say that anything in those minutes is inaccurate as actually having transpired before that committee?

A Yes, sir, I do.

Q Well, tell me where it says that in your letter.

A In the minutes it says that Elwood Feldman testified on the Company's behalf. I told Arthur Morningstar when Elwood Feldman testified that he was not there, I did not talk to him. Mr. Morningstar told me, don't be ignorant like they are, keep your mouth shut --

Q But Mr. Feldman --

A I am telling you, sir --

Q Let me interrupt you, but Mr. Feldman did testify at the hearing, didn't he?

A Yes, he did.

Q He did?

was not really what I was getting at. I know why the lawsuit was filed. That is not what I was trying to get at. Why did you wait until January of '78 to make the decision, or what took so long to make the decision?

A I waited until I exhausted my internal union remedies.

Q And that was not until January of '78?

A Yes, sir.

Q What internal union remedies did you exhaust?

A The grievance machinery. That's all.

Q The grievance machinery under the contract?

A Yes, sir.

Q When was the grievance machinery under the contract exhausted?

A Mr. Morningstar -- I asked Mr. Morningstar -- I guess Mr. Morningstar told me it was exhausted and the decision was final and binding. I asked him at a union meeting.

Q What decision?

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A The Eastern Conference decision.

Q When did he tell you that?

A At the meeting.

Q What --

A January -- December-January of 1977 -- December of '77, January of '78.

Q One of those two?

A One of those two meetings.

Q Did you take any other action to exhaust any internal union remedies other than to ask Mr. Morningstar as to the finality of the Eastern Conference decision?

A Yes, sir.

Q What actions, if any, did you take?

A I talked with Mr. Morningstar and

told him I was dissatisfied with the decision and went over the reasons why I was dissatisfied. I have to answer I didn't file any other grievances, any other grievances on it.

Q You are talking about internal union grievances?

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A The panel asked me was I satisfied, did I feel that I had -- they asked me was I satisfied, did I feel I had a full and fair hearing and I said to them I will make the decision when you make your decision. They asked the question a second time. I said I don't know. Then he spoke loud --

Q Who is the "he" you are talking about?

A Chairman Hunter, that he expected that I answer that question, that I was being compelled to answer that question.

Q What question?

A Three times the same question. I

said I don't know, I guess so.

Q Was that the end of the hearing?

A Yes, sir.

Q What happened when the hearing was over, what did you do?

A I left.

Q Walked out of the room, walked to your car and drove back to Baltimore?

A I believe I made a phone call and then I

Mr. Hunter, the chairman, as to whether or not you felt that you were properly represented, and I think you replied that you said you would give your answer when they give you yours, or something like that. The second time you said no, I don't know, and the third time, I don't know, I guess so, or something like that. Is that essentially correct?

A Yes, sir.

Q All right now, Mr. Del Costello, could you tell us what, if any, reaction was elicited when you responded to the first question, I will give you your answer when you give me mine?

A Everybody in the room laughed at me.

Q Now, you indicated that you found fault with the minutes, according to Anchor's Exhibit Number -- I guess it is 38 -- and I

think you indicated or you responded earlier to Mr. Goldfarb -- I don't recall all of your testimony -- but I think you answered him to the effect that you found certain things wrong with what Mr. Morningstar did or didn't do but you -- and then you answered some questions with respect to what you felt was wrong. Now, let me ask you, did Mr. Feldman testify? I think you indicated he testified. 171

A Yes, sir, he did, and --

Q Was that included in the minutes, his testimony?

A No, sir.

Q And you say Feldman testified, and does his testimony appear anywhere in the minutes?

A No.

Q Now, you also indicated that Duke O'Connor testified, did you not?

A Yes, sir.

Q Is his testimony indicated anywhere in the minutes?

A No, sir.

Q Approximately how long, excluding time or times that was taken for recesses to which you alluded earlier when Mr. Yaller asked you the question concerning that, approximately how long did the hearing take?

SANDY DEPOSITION: DECEMBER 19, 1979

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

PHILIP DEL COSTELLO)

vs.)

INTERNATIONAL BROTHERHOOD) CASE NO. H-78-436

OF TEAMSTERS, CHAUFFEURS,) CIVIL

WAREHOUSEMEN AND HELPERS)

OF AMERICA, et al.)

The deposition of Daniel Sandy was taken on Wednesday, December 19, 1979, commencing at 10:40 A.M., at the offices of Melnicove, Kaufman & Weiner, 36 South Charles Street, Baltimore, Maryland, before Triminie M. Shelton, Notary Public.

CAPPY HALLOCK, RPR, INC.
800 MERCANTILE BUILDING
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201
(301) 752-1733)

trouble.

Q I am talking about not the involuntary or voluntary sense, I am talking about -- obviously, all employment has to be consensual -- but I am talking about the definition of the -- when the contract provides that a man loses his seniority if he quits his job, is there anything in that contractual provision that says if he is subordinate or if he is willfully insubordinate or if he breaks a company rule, that he quits?

A It is the question of intent in the industrial relations context. If he says I refuse or I am not going to do what you tell me to do, then he has quit.

Q All right. So again, you correct me if I am wrong, would you define a voluntary quit as a willful refusal by an employee to follow the instructions of the company provided that those instructions are not in violation

of the contract and not in violation of the law?

MR. GOLDFARB: I am going to object to it, calling for a legal conclusion as to what is in violation of the law.

MR. ZINMAN: Read the question back, please.

(THE RECORD WAS READ AS REQUESTED.)

THE WITNESS: I don't think either was violated, the law or the contract.

BY MR. ZINMAN:

Q I am asking you if that would be how you would define a voluntary quit?

A How I would define it?

Q In other words, would you define a voluntary quit as any refusal by an employee to follow instructions, lawful instructions, by the Company?

A Yes, and those instructions --

Q Obviously to be lawful, the

instructions could not violate the contract or the law.

A Then I would say in this instance neither was violated, either the law or the --

Q But would that be a fair definition of voluntary quit?

MR. GOLDFARB: I object to it again, but answer if you can.

A I can't follow your meanderings as to what the law -- 502 of Protected Activity -- in the context of industrial relations when a man is given an order to do something and he fails to carry through and says I am not going to do it, and then you explain to him that his refusal does constitute a voluntary quit and he tells you to go to hell, he has quit.

Q That is what I am asking you, Mr. Sandy. The only thing I asked you with regard to the law was, obviously, if the

instruction you gave to the man was a violation of the union-company contract or the law, it would be unlawful instruction, but with that understanding that the instruction or order would be an appropriate instruction or order for the company to give the man --

A I think it was a reasonable instruction.

Q And he refused to take that instruction, in your view that would constitute a voluntary quit regardless of what that instruction would consist of?

A Not if it were reasonable.

Q I am assuming if it were appropriate and reasonable. Now, in a situation where you charge a man with voluntary quit by reason of his refusal to obey --

A Carry out a reasonable order.

Q Carry out a reasonable order, you would not have to notify him, give him a prior

warning?

A No.

Q Isn't that a rather nice way of getting around Section 40?

MR. GOLDFARB: I object to that.

A No, no, no. To force him to work after he has said he has quit would be enslavement.

MR. GOLDFARB: How would you do that?

Q What if an employee such as Mr. Del Costello indicates that he is not quitting, that he is just refusing to follow that particular instruction?

A You are getting into a question of semantics.

Q Are you suggesting that every time somebody refuses to follow an appropriate order of the company, he quits?

A If it is reasonable, not done capriciously or arbitrarily, I think the company

has a right to expect. That is the reciprocity -- you pay a wage and he is expected to work, and if he wants to quit I don't think you can confine him.

Q I am not quibbling with you as to whether or not it is reasonable. I am not arguing about the reasonableness of the order, nor is the objective of the question to say that the employee is right in disobeying it. It is the definition which I am interested in. Now, what this is, really, what we are talking about is really an act of insubordination, and we are assuming that the insubordination is unjustified in following the order.

Making that assumption, Mr. Sandy, do you seriously suggest that for that act of insubordination, from the standpoint of the contract, it constitutes a quit?

MR. GOLDFARB: I object to it as being vague and argumentative. Answer if you know.

A I most seriously say the opposite would be anarchy, where people would tell you I am going to work or I am not going to work, or you give them a reasonable order to -- say, he is there, a truck driver, you furnish a truck and a load, and if he doesn't want to work --

Q All right, for example, if the order was given to Mr. Del Costello to drive what would appear to be a safe truck and he refused, why didn't the company say you are fired for insubordination? Why did they have to say he voluntarily quit?

A The company took the position that he voluntarily quit his job. That is the reasonable -- and in the industrial relations history when a man does what Mr. Del Costello did, that is a voluntary quit.

Q Doesn't the history reflect a simple response that you are fired because you won't do the job properly?

A No, no, no. He opts that I don't want

to work here any more.

Q Well, he didn't say he didn't want to work here. He was insubordinate from your standpoint in refusing to take what your people regarded as a safe truck.

MR. GOLDFARB: I object as being argumentative. You have been going over it again and again.

Q Isn't that what the real thrust is?

MR. GOLDFARB: Answer it again for him.

A The real thrust is he refused to follow a reasonable rule of industrial relations that you do the work and then you grieve, and if he had a grievance he had to take the load to Ste. Theresa and come back --

Q I understand that, but I am saying why didn't you regard that as a firing? When he was insubordinate and he was terminated, why didn't you say he was fired?

A Because that wasn't necessarily so. He voluntarily quit his job when he refused to

follow a reasonable order.

Q Was there any evidence he walked off the job?

A He refused to take the truck. The fact of the matter is he had to be forced off the property by police.

Q Didn't he insist upon getting another truck?

A No -- I don't know. I am not going into that. I don't know the merits of the case. I don't know word for word what happened. My presentation was that he refused to follow a reasonable order, and in the context of that contract, that is a voluntary quit.

Q Is there any specific provision in the contract, Exhibit 1, that says that insubordination is a voluntary quit?

A I stated before that there isn't, and it wasn't based on that. It was based on his voluntary quitting, and if he quits he loses

his seniority.

Q In other words, it is your interpretation of --

A Backed by ten panel members and the history of industrial relations.

MR. ZINMAN: No other questions.

MR. YALLER: I have something. It will be short.

National Master Automobile Transporters Agreement

and the

Central and Southern

Conference Areas

SUPPLEMENTAL AGREEMENTS

Covering Truckaway, Driveaway

Local and Garage Operations

PART I General, Including Uniform Rules and Regulations

PART II Truckaway

PART III Driveaway

PART IV City Delivery, Pull-Out, Mounting Service and Yard

PART V Garage

JUNE 1, 1976, THRU MAY 31, 1979

NATIONAL MASTER

AUTOMOBILE TRANSPORTERS

AGREEMENT

***

For the Period

June 1, 1976

thru

May 31, 1979

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AUTOMOBILE TRANSPORTERS

AGREEMENT 1976-1979

NATIONAL MASTER AUTOMOBILE TRANSPORTERS

AGREEMENT COVERING TRUCKAWAY, DRIVEAWAY

AND LOCAL AGREEMENTS

FOR THE PERIOD

June 1, 1976 thru May 31, 1979

covering:

operations in, between and over all of the states, territories and possessions of the United States, and operations into and out of all contiguous territority. The NATIONAL AUTOMOBILE TRANSPORTERS LABOR DIVISION and

---------- hereinafter referred
(Company)
to as the "Employer", and

The Teamsters National Automobile Transporters Industry Negotiating Committee representing the Local Unions affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF

AMERICA, hereinafter referred to as the "Union", agree to be bound by the terms and conditions of this Agreement.

such changed operations are put into effect, the matter shall be submitted to the National Joint Arbitration Committee for final disposition. Rates agreed upon or awarded shall be effective as of the date the changed operations were put into effect.

Section 5 Skids

The employer will make every effort to resolve all problems arising from the handling of skids, including health and safety. If the problem is not resolved, it shall be submitted to the grievance procedure contained in Article 7 of this Agreement.

ARTICLE 7.

Grievance Machinery

Section 1.

The parties agree that all grievances and questions arising from the provisions of this

Agreement shall be submitted to the grievance procedure for determination.

No Strike and/or Lockout

The Unions and the Employers agree that there shall be no strike, tie-up of equipment, slowdowns or walkouts on the part of the employees, nor shall the Employer use any method of lockout or legal proceeding without first using all possible means of a settlement, as provided for in this Agreement, of any controversy which might arise.

Any disputes the parties are unable to settle shall be referred to the appropriate Automobile Transporters Joint Conference Artibtation Committee, except

for the following direct violations, which are non-disputable:

(a) Nonpayment of the established rates provided for in this Agreement, Supplements or Riders;

(b) Nonpayment of health and welfare contributions as provided for in this Agreement, Supplements or Riders;

(c) Nonpayment of pension contributions as provided for in this Agreement, Supplements or Riders;

(d) Noncompliance with Joint Arbitration Committee decisions with respect to Article 3, Section 4;

(e) This paragraph does not

apply to disputes over the computation of wages or application of rates.

Section 2: Work Stoppages

(a) It is mutually agreed that the Local Union will, within two (2) weeks of this Agreement, serve upon the Employer a written notice listing the Union's authorized representatives who will deal with the Employer, make commitments for the Local Union generally and, in particular, those individuals having the sole authority to act for the Local Union in calling or instituting strikes or any stoppages of work which are not in violation of this Agreement. The Local Union may from time to time amend its listing of

authorized representatives by certified mail. The Local Union shall not authorize any work stoppage, slowdown, walkout, or cessation of work in violation of this Agreement. It is further agreed that in all cases of an unauthorized strike, slowdown, walkout, or any unauthorized cessation of work which is in violation of this Agreement the Union shall not be liable for damages resulting from such unauthorized acts of its members. In the event of a work stoppage, slowdown, walkout or cessation of work not permitted by the provisions of Article 7, Section 1, alleged to be in violation of this Agreement, the Employer

shall immediately send a wire to the appropriate Area Conference to determine if such strike, slowdown, walkout or cessation of work alleged to be in violation of this Agreement shall be deemed to be authorized unless notification thereof by telegram has been received by the Employer and Local Union from such Area Conference. If no response is received by the Employer within twenty-four (24) hours after request, excluding Saturday, Sunday and holidays, such strike, etc., in violation of this Agreement shall be deemed to be unauthorized by the Area Conference for the purposes of this Agreement.

In the event of such unauthorized work stoppage or picket line, etc., in violation of this Agreement, the Local Union shall immediately make every effort to persuade the employees to commence the full performance of their duties and shall immediately inform the employees that the work stoppage and/or picket line is unauthorized and in violation of this Agreement.

The question of whether employees who refuse to work during such unauthorized work stoppages, in violation of this Agreement, or who fail to cross unauthorized picket lines at their Employer's premises shall be considered as participating in an unauthorized

work stoppage in violation of this Agreement, may be submitted to the grievance procedure. The International Brotherhood of Teamsters, Teamsters National Automobile Transporters Industry Negotiating Committee, Area Conferences, Joint Councils and Local Unions shall make immediate efforts to terminate any strike or stoppage of work as aforesaid which is not authorized by such organizations, without assuming liability therefor. For and in consideration of the agreement of the International Brotherhood of Teamsters, Teamsters National Automobile Transporters Industry Negotiating

Committee, Area Conferences, Joint Councils and Local Unions shall make immediate efforts to terminate any strike or stoppage of work, as aforesaid, which is not authorized by such organizations, without assuming liability therefor. For and in consideration of the agreement of the International Brotherhood of Teamsters, Teamsters National Automobile Transporters Industry Negotiating Committee, Area Conferences, Joint Councils, and Local Unions affiliated with the International Brotherhood of Teamsters to make the aforesaid efforts, including the use of all reasonable means at their disposal to require Local Unions

and their members to comply with the law or the provisions of this Agreement, including the provisions limiting strikes, work stoppages, as aforesaid, the Association and Employers who are parties hereto agree that they will not hold the International Brotherhood of Teamsters, Teamsters National Automobile Transporters Industry Negotiating Committee, Area Conferences, or Joint Councils liable or sue them in any court or before any administrative tribunal for undertaking such efforts to terminate unauthorized strikes or stoppages of work, as aforesaid, or for undertaking efforts to

terminate unauthorized strikes or stoppages of work, as aforesaid, or for undertaking such efforts to require Local Unions and their members to comply with the law or the provisions of this Agreement. It is further agreed that the signator association and Employers will not hold the International Brotherhood of Teamsters, Teamsters National Automobile Transporters Industry Negotiating Committee Area Conferences, Joint Councils or Local Unions liable or sue them in any court or before any administrative tribunal for such efforts to terminate strikes or stoppages of work or requiring Local Unions and their members

to comply with the law or the provisions of this Agreement, or for taking no further steps to require them to do so. The provisions of this Article shall continue to apply during that period of time between the expiration of this Agreement and the conclusion of the negotiations or the effective date of the successor Agreement, whichever occurs later. It is understood and agreed that failure by the International Brotherhood of Teamsters, Teamsters National Automobile Transporters Industry Negotiating Committee, Area Conferences, and/or the Joint Councils to authorize a strike by a Local Union shall not

relieve such Local Union of liability for a strike authorized by it and which is in violation of this Agreement.

(b) The question of whether the International Union, Teamsters National Automobile Transporters Industry negotiating Committee, an Area Conference, Joint Council or Local Union have met their obligation set forth in the immediately preceding paragraph or the question of whether the International Union, Teamsters National Automobile Transporters Industry Negotiating Committee, an Area Conference, Joint Council, or a Local Union, separately or jointly, participated in

in an unauthorized work stoppage, slowdown, walkout or cessation of work in violation of this Agreement by calling, encouraging, assisting or aiding in such stoppage, etc., in violation of this Agreement, or the question of whether an authorized strike provided by Article 7, Section 1, is in violation of this Agreeent, or whether an Employer engaged in a lockout in violation of this Agreement shall be submitted to the grievance procedure at the national level, prior to the institution of any damage suit action. When requested, the Co-Chairman of the National Joint Arbitration Committee shall immediately appoint a

subcommittee to develop a record by collecting evidence and hear testimony, if any, on the sole question of whether the International Union, Teamsters National Automobile Transporters Industry Negotiating Committee, an Area Conference, Joint Council or Local Union have met their obligation, as aforesaid, or of Union participation or Employer lockout in violation of this Agreement. The record shall be immediately forwarded to the National Joint Arbitration Committee for decision. If a decision is not rendered within thirty (30) days after the Co-Chairmen have convened the National Committee, the matter

shall be considered deadlocked. A majority decision of the National Committee on the questions presented, as aforesaid, shall be final and binding on all parties. If such majority decision is rendered in favor of one or more of the Union entities, or the Employer, in the case of lockout, no damage suit proceedings on the issues set forth in this Article shall be instituted against such Union entity or such Employer. If, however, the National Committee is deadlocket on the issues referred to in this subsection 2(b), either party may institute damage suit proceedings, but the

record of the National Joint Arbitration Committee and its Subcommittee shall not be offered in evidence by either party in this subsection 2(b), agreement to utilize this procedure shall not thereafter in any way limit or constitute a waiver of the right of the Employer or Union to commence damage suit action. However, the use of evidence in this procedure shall not waive the right of the Employer or Union to use such evidence in any litigation relating to the strike or lockout, etc., in violation of this Agreement. There shall not be any strike, slowdown, walkout, cessation of work or lockout as

a result of a deadlock of the National Joint Arbitration Committee on the questions referred to under this subsection 2(b), and any such activity shall be considered a violation of this Agreement.

(c) In the event that an Employer, party to this Agreement, commences legal proceedings against the Union after the Union's compliance with the provisions of Article 8, Section 2(a), the Employer Association will cooperate in the presentation to the court of applicable majority grievance committee decision or grievance deadlocked by the National Grievance Committee.

(d) Nothing herein shall prevent the Employer or Union from securing remedies granted by law except as specifically set forth in this subsection 2(b).

Section 3. Grievance Procedure

Disputes and grievances shall first be taken up by the employee involved, and if no settlement is reached, then taken up between the Steward or Business Agent of the Local Union involved and the Employer representative. Disputes and grievances shall be put in writing and presented to the Company within one (1) week, whenever possible, after the grievance arises, but in no case later than thirty (30) days after the grievance

arises, except as may be otherwise provided in a supplemental agreement. The Company must reply to the written grievance in writing to the Local Union within fourteen (14) days. The Company must designate its representatives at each facility who are authorized to settle grievances on the local level and must so notify the Local Union with one (1) week of the consummation of this Agreement. In the event the unauthorized representatives of the Company or the Union changes during the life of this Agreement, the Company shall notify the Union or the Union shall notify the Company, as the case may be, within one (1) week

of such change. After the dispute or grievance is reduced to writing, the said Company representative will make available for inspection by the Business Agent and/or Stewart, time sheets and all such other records as are pertinent to the handling of the specific dispute or grievance. This does not preclude nor prevent an oral attempt on the part of the Business Agent or Steward to settle such dispute or grievance before a request is made for such record. The dispute or grievance must be settled or deadlocked at the local level within five (5) days, excluding Saturday, Sunday and holidays, after the Business Agent has

taken it up. After the five (5) day period, not not later than fifteen (15) days, either party has the right to file its grievance with the appropriate Local Committee or Joint Conference Arbitration Committee referred to in Section 4 by Company and Local Union. Time limits as set forth in this Section shall apply equally to the Employer and the Union. The following procedure shall then apply:

Section 4. National Automobile Transporters Joint Arbitration Committee

(a) The Employers and the Unions from each of the designated Conference areas shall together establish for the duration of this Agreement, the National Automobile Transporters Joint

Arbitration Committee, hereinafter referred to as the National Joint Arbitration Committee. Any Penel of the National Joint Arbitration Committee hearing a case shall consist of an equal number of designated representatives of the Employers and the Unions who are parties to this Agreement.

Joint Arbitration Conference Committees

(b) The Employers and the Unions, parties to this Agreement, shall together, for the duration of this Agreement, in the appropriate areas referred to in Article 1, Section 1, establish Automobile Transporters Joint Arbitration Committees to be designated as:

(1) Central-Southern Conference

Automobile Transporters Joint Arbitration Committee;

(2) Western Conference Automobile Transporters Joint Arbitration Committee;

(3) Eastern Conference Automobile Transporters Joint Arbitration Committee.

Any panel of a Joint Conference Arbitration Committee hearing a case shall consist of an equal number of designated representatives of the Employers and the Unions who are parties to this Agreement from the appropriate area.

Joint State of City Automobile Transporters Grievance Committees

(c)(1) The Employer and the Union in each city and/or area in the Central/Southern Conference and Western

Central-Southern Conference and Western Conference Areas

ference areas where there are three or more Truckaway and/or Driveaway companies, shall together create a permanent Local Joint Committee, which shall consist of an equal number appointed by Employers and Union, but not less than three (3) from each group. Each member may appoint an alternate in his place.

(2) The Employers and Local Union shall agree upon the number of and geographical location of Joint State Automobile Transporters Grievances Committees to function hereunder.

(3) The Local Joint Committee shall, at their first

meeting, formulate rules of procedure to govern the conduct of its proceedings. However, if the Committee fails to agree upon rules of procedure, the matter shall be referred to the appropriate Joint Conference Arbitration Committee, which Committee shall formulate rules of procedure for the Local Committee. Each Local Joint Committee shall have jurisdiction over disputes and grievances involving said Local Union.

Section 5. Function of National Joint Arbitration Committee

(a) It shall be the function of the National Joint Arbitration Committee to settle disputes and grievances which arise under the

following circumstances:

(1) Involving interpretations or of disputes over the provisions of the National Master Automobile Transporters Agreement.

(2) Disputes and grievances the determination of which affect an employer and/or Union operating in two or more of the designated Conference Areas if more than one area is affected by the issue.

(3) Disputes and/or grievances which are deadlocked or referred by any of the three Joint Conference Arbitration Committees referred to above.

(4) Disputes and interpretations concerning alleged conflicts in provisions of the National Master Agreement, on the one hand, and Area Supplements and Riders thereto on the other hand.

The National Joint Arbitration Committee shall meet at mutually agreed times and shall formulate rules of procedure to govern the conduct of its proceedings.

Functions of the Automobile Transporters Joint Conference Arbitration Committees.

(b) It shall be the function of the Automobile Transporters Joint Conference Arbitration Committees to settle disputes and grievances which cannot be settled in accordance with Section 3 of this Article. The Joint Conference Arbitration Committees

shall meet at mutually agreed times and shall formulate rules of procedure to govern the conduct of their proceedings.

Function of City or State Committee.

(c) It shall be the function of the various Local Committees in the appropriate Conference Area, above referred to, to settle disputes which cannot be settled by the Employer and the Local Union in accordance with the procedure established herein.

Section 6. Rights of National, Joint Conference and Local Arbitration Committees.

The Committee shall have the right to investigate all facts pertaining to the dispute. Both parties shall be entitled to present such evidence and witnesses in support of their position as they see fit. A decision

by a majority of a Panel of any of the Committees shall be final and binding on all parties, including the employee and/or employees affected. The Committees referred to above shall have the authority to order full, partial or no compensation in deciding disputes and/or grievances and rendering awards.

Section 7. Board of Arbitration.

(a) If any grievance or disagreement is deadlocked by the National Joint Arbitration Committee, as provided above, then both the Union and the Employer shall submit the grievance to a Board of Arbitration consisting of three (3) members:

One (1) member to be appointed by the Union;

One (1) member, by the Employer; and the

Two (2) together appointing a third disinterested arbitrator.

All grievances submitted to the Board of Arbitration must be heard and disposed of within thirty (30) days. The findings and decision of a majority of the Arbitration Board shall be final and binding on the parties involved.

(b) It is agreed that the arbitrator is empowered to hear and decide the deadlocked case, if only one of the parties submits to arbitration

or, if either party fails to appear at the hearing or to present evidence. The arbitrator shall have the authority to interpret and apply the provisions of this Agreement or Supplements thereto where appropriate, but shall not have the authority to amend or modify this Agreement or Supplements thereto, or establish new terms and conditions under this Agreement or Supplements thereto.

(c) The cost of the arbitrator shall be shared equally by both the Local Union and Employer involved.

Section 8. (a) It is agreed that all matters pertaining to the

interpretation of any provision of this National Master Agreement, whether requested by the Employer or the Union, must be submitted to the National Automobile Transporters Joint Arbitration Committee, which Committee, after listening to testimony on both sides, shall make a decision.

(b) It is agreed that all matters pertaining to the interpretation of any provision of a Conference (area) Joint Arbitration Committee, which Committee, after listening to testimony on both sides, shall make a decision.

(c) Any decision of any of the Joint Arbitration Committees

referred to above, shall be final and conclusive and binding upon the Employer and the Union, and the employees involved.

Section 9. Failure of either party involved to comply with any final decision of a panel of any Joint Committee established under this Article within ten (10) days shall give the other party the immediate right to all legal and economic recourse.

Section 10. The procedure set forth in the Local, State and Area grievance machinery and in the national grievance procedure may be invoked only by the authorized Union representative or by the Employer. Authorized

representatives of the Union may file grievances alleging violation of this Agreement under local grievance procedure. Time limitations regarding the filing of grievances, if not set forth in the respective Supplemental Agreements, must appear in the Rules of Procedure of the various grievance committees and shall apply equally to Employers and employees.

Section 11. Unless otherwise expressly provided in this Agreement, any and all disputes, including interpretations of contract provisions arising under, out of, in connection with, or in relation to this collective bargaining agreement,

shall be subject to the grievance procedure of the Agreement.

Section 12. All meetings of Joint Committees referred to in this Article must be attended by each member of such committee or his alternate.

Section 13. All local, conference, and national grievance committees as constituted under this agreement shall have the jurisdiction and power to decide grievances which arose under the preceding agreements and supplements thereto, applying, however, the contract under which the grievance arose.

ARTICLE 8.
Protection of Rights

Section 1. Picket Line

It shall not be a violation of this Agreement, and it shall not be cause for discharge or disciplinary action in the event an

an employee refuses to enter upon any property involved in primary labor dispute, or refuses to go through or work behind any primary picket line, including the primary picket line of Unions party to this Agreement, and including primary picket lines at the Employer's place of business.

Section 2. Struck Goods

It shall not be a violation of this Agreement, and it shall not be a cause for discharge or disciplinary action if any employee refuses to perform any service which his Employer undertakes to perform

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PHILIP DEL COSTELLO	*	
Plaintiff	*	
vs	*	CIVIL ACTION
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, et al.	*	NO. J-78-436
Defendants	*	

ARGUMENT OF PLAINTIFF IN SUPPORT OF ITS ANSWER TO MOTION FOR SUMMARY JUDGMENT

ISSUES

I

SHOULD THE SUPREME COURT'S DECISION IN MITCHELL BE GIVEN PROSPECTIVE OR RETROSPECTIVE EFFECT?

II

ASSUMING THAT MITCHELL SHOULD BE GIVEN RETROSPECTIVE EFFECT, WHICH STATUTE OF LIMITATIONS IS APPROPRIATE FOR THE COURT TO APPLY?

III

SHOULD THE DEFENDANTS' CONDUCT PREVENT THEM ASSERTING THE DEFENSE OF LIMITATIONS UNDER THE MARYLAND UNIFORM ARBITRATION ACT?

IV

IF THE THIRTY DAY LIMITATION PERIOD PROSCRIBED BY THE MARYLAND UNIFORM ARBITRATION ACT UNREASONABLY SHORT AND/OR IN VIOLATION OF THE DUE PROCESS OF LAWS UNDER THE FOURTEENTH AMENDMENT?

ARGUMENT

The thrust of the Defendants' argument for summary judgment is that the Plaintiff is time-barred from initiating his 301 suit by reason of the Supreme Court's ruling in the case of United Parcel Service, Inc. vs William Mitchell, 49 Law Week 4378, decided April 20, 1981, on the ground that the applicable Statute of Limitations is thirty days under the Maryland Uniform Arbitration Act (Courts and Judicial Proceedings Article 3-201, 3-234).

FACTS

On July 19, 1977, a hearing was held before an arbitral body consisting of an equal

number of representatives from the Union and the Company pursuant to the Labor Management Contract between Anchor Motor Freight and Local 557 (Labor Management Contract attached to pleadings), for the purpose of determining whether or not Philip Del Costello was unjustly discharged by the Defendant, Anchor Motor Freight. On that date the Eastern Conference decided that the termination of Del Costello's employment was appropriate and presumably mailed Mr. Del Costello a copy of this Decision which was received a day or two thereafter (copy of this Decision referred to as Exhibit 3 in Complaint is attached hereto and marked Plaintiff's Exhibit No. 2).

On August 19, 1977, Arthur Morningstar, who represented Mr. Del Costello on behalf of Local 557 at the Arbitration hearing mailed Mr. Del Costello a letter (a copy of which is attached and marked Exhibit No. 3), enclosing

the minutes of the hearing advising Mr. Del Costello that,"The enclosed minutes of the Eastern Conference (copy of which is attached and marked Exhibit No. 4) to be approved at the September 20, 1977, meeting of the Eastern Conference Joint Area Committee, and that if he (Del Costello) had any additions, deletions or corrections, to please put them in writing and send them to me immediately. Failure to do so will result in the minutes being approved." By letter of September 14, 1977 (copy of which is attached and marked Plaintiff's Exhibit No. 5), with a copy of Arthur Morningstar, Mr. Del Costello wrote the President of Local 557 a response to Morningstar's correspondence in which he addressed himself to what he regarded as the unfairness of the hearing as well as the subject of deletions, additions and corrections. On Page 76 of the Del Costello deposition (a copy of which is

Exhibit 6), Del Costello explained that his September 14, 1977, correspondence related to the inaccuracy of the minutes to the extent that the Company's main witness, Ellwood Feldman, Shop Supervisor, testified that he witnessed and observed Del Costello's refusal to drive a "safe truck". Because the Plaintiff had absolutely no contact with Mr. Feldman that day, he promptly advised Morningstar of this fact at the hearing, but Morningstar failed to object or ask the panel to postpone the hearing. According to the Del Costello Affidavit attached to this Memorandum (Plaintiff's Exhibit No. 7), the Plaintiff states that even though he was not completely satisfied with the manner in which Morningstar represented him at the hearing, he initially asked Morningstar to help him with his answer because of the belief that it was still possible for the Conference to reconsider

its Decision. However, when Morningstar refused to assist him and directed him to his "Communist friends in Prod", he contacted his previous counsel, Claude McKenzie, making inquiry as to what could be done, at which time McKenzie politely declined to help. Thereafter, on or about September 13, 1977, he contacted present counsel for advise and assistance regarding the preparation of the September 14 letter, which was never answered by his Local Union or the Eastern Conference. In late December, 1977, at a Union meeting, Del Costello asked Morningstar when the Sept. 14 letter would be answered, and Morningstar replied twice, "You got your answer." Del Costello concluded at that time that nothing more would be done by way of a re-hearing or otherwise. Thereafter, in late December of 1977, he requested present counsel to represent him. After conducting the appropriate

investigation suit was initiated on March 16, 1978, by the Plaintiff.

I

THE SUPREME COURT'S DECISION IN MITCHELL SHOULD BE GIVEN PROSPECTIVE EFFECT

The question of retrospective or prospective application of the State Statute of Limitations to an established Federal right was addressed in the case of Chevron Oil Co. vs Hudson, 404 U.S. 97, 92 Sup. Ct. 349 (1971), Stewart, J., which was strikingly similar to the Del Costello case. The Claimant, in Chevron, filed an Admiralty case alleging personal injury approximately two and a half years after the accident, at a time when a line of Federal Court Decisions interpreting the "Lands Act" held that under Admiralty Law the Statute of Limitations was more than one year. During the course of pre-trial discovery proceedings, the Supreme Court, in the case of

Rodrigu vs. Aetna Cas. Co., 395 U.S. 352 (89 Sup.Ct. 1835), held that:

> "State law remedies are not inconsistent with the applicable Federal Law and therefore the Federal Courts would apply the Statute of Limitations in the State where the injury occurred, namely, Louisiana, which was one year."

Accordingly, the District Court granted the Defendants' Motion for Summary Judgment on the ground that his cause of action was time barred by the Louisiana one year limitation.

Judge Stewart, on page 354 of the Chevron opinion, held that:

> "Although we hold that Louisiana's one year Statute of Limitations must be applied under the Lands Act as interpreted in Rodrigu, we do not blind ourselves to the fact that this is in relevant respect a pre-Rodrigu case. The Respondent's injury occurred more than three years before the announcement of our decision in Rodrigu. Yet, if Louisiana's Statute of Limitations controls in this case, his action was time barred more than two years before Rodrigu. In these circumstances we must consider the Respondent's argument that the Statute of Limitations should be given non-retroactive application under Rodrigu."

The Court went on to say, on Page 355:

"In our cases dealing with non-retroactive questions we have generally considered three separate factors: (1) The decision to be applied non-retroactively must establish a new principle of law either by overruling clear past precedent on which litigants have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed. (2) It has been stressed that we must weigh the merits and demerits of each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation. Citing Linkletter vs Walker, 381 U.S. 639. (3) Finally, we have weighed the inequity imposed by retroactive application, for where a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the injustice or hardship by a holding of non-retroactivity."

The Supreme Court related its reasons in support of prospective enforcement by stating:

"Upon consideration of each of these factors, we conclude that the Louisiana one year Statute of Limitations should not be applied retroactively in the present case. Rodrigu was not only a case of first impression in this Court under the Lands Act, but it also effectively overruled a long line of Decisions

by the Court of Appeals for the Fifth Circuit, holding that the Admiralty Law, including the doctrine of Laches, applied to the Lands Act. When the Respondent was injured, for the next two years until he instituted his law suit, and for the ensuing year of pre-trial proceedings, these Courts of Appeals Decisions represented the law governing his case. It cannot be assumed that he did or could foresee that this consistent interpretation of the Lands Act would be overturned. The most he could do was to rely on the Law as it was then. We should not indulge in the fiction that the law now announced has always been the law and, therefore, those who did not avail themselves of it waive their rights."

"To hold that the Respondent's law suit is retroactively time barred would be anomalous indeed. A primary purpose underlining the absorption of State law as Federal Law in the Lands Act was to aid injured employees by affording them comprehensive and familiar remedies. Yet retroactive application of the Louisiana Statute of Limitations to this case would deprive the Respondents of any remedy whatsoever on the basis of superceding legal doctrine that was quite unforceeable. To abruptly terminate this lawsuit that has proceeded through lengthy and no doubt costly discovery stages for a year would surely be inimicable to the benificent purposes of Congress. It would also produce the most substantial and inequitable results,

citing Ciprioana vs City of Yuma, 395 U.S. 706, 89 Sup.Ct. 1900, to hold that the Respondent slept on his rights at a time when he could not have known the time limitations that the law imposes on him."

The Court went on to say:

"That certainly the Respondent's potential redress for his allegedly serious injury .... and injury that may significantly undercut his future earning power is entitled to similar protection."

The Court concluded by stating:

"Both the devotion to the underlined purpose of the Lands Act absorption of State Law, and a weighing of equities requires non-retroactive application of the State Statute of Limitations here."

The following Supreme Court cases have also addressed the Doctrine of Retroactivity:

Simpson vs Union Oil Co., 377 U.S. 13, 84 Sup.Ct. 1051; England vs Louisiana Medical Examiners, 375 U.S. 411, 84 Sup.Ct. 2161; Lemon vs Kurtzman, 93 Sup.Ct. 1463 (1973); Hanover Shoe vs United Machinery Corp., 392 U.S. 481, 88 Sup.Ct. 224 (1968).

Senior Judge Cowen of the Fourth Circuit had an opportunity to interpret the Chevron

criteria in a civil case in which the Appellants lost their jobs in Woodward Cullier, et al. vs Harper and Ramsey of the County of Lee, Virginia, 589 Fed. 2d. 753 (1978). In that case, Judge Cowen refused to apply the Supreme Court's Decision in Elrod vs Burns, 427 U.S. 347 (1976) retrospectively because the Supreme Court's Decision was not clearely foreshadowed and unquestionably overruled past precedent because the benefits to be gained by retrospective application were outweighed by the considerations of reliance, hardship and injustice as well as the impact on the administration of justice in the Circuit. The Court reached this result in part because Elrod overturned past precedents in the Fourth Circuit, and also because the adverse impact that retrospective application would have upon a large number of employees who would lose their jobs as well as the impact that retrospective

application would have upon currently pending cases.

Similarly, U.S. District Court in Virginia, in the case of Woods vs Safeway Stores, 420 Fed. Sup. 35 (1976), Mehridge, J., held that a Title 7 Complainant who filed a claim with EEOC beyond the 180 day period at a time when the settled law permitted the filing of a grievance under the Labor Management Contract to toll the 180 day limitations period was not time barred because of a subsequent non-tolling Supreme Court decision. The District Court applying Chevron ruled that the Supreme Court's non-tolling decision applied non-retroactively.

It is respectfully asserted that the standards governing non-retroactive application of the Statute of Limitations in Chevron cries out for prospective application of limitations in the Del Costello case,

irrespective of whether the limitations period is thirty days, three months or six months. It is obvious that the recent decision in Mitchell was definitely a case of first impression in the Supreme Court of the United States. Moreover, it is equally apparent that at the time that suit was initiated in Del Costello an overwhelming number of prior decisions, including the Courth Circuit, clearly established that the applicable Statute of Limitations for initiating a 301 Action against the Union for breach of its duty of fair representation, and against the Company for breach of contract, in circumstances where the combined conduct tainted the decision of the arbitral body was the general Statute of Limitations for either Torts or Contracts, and not the decisively shorter period of limitations set forth in the various State Statutes governing the vacating of arbitration awards.

In March of 1978, the Decisions governing the appropriate limitations period for the filing of a 301 Action, although diverse in their factual settings, sometimes involved a claim by the employee against the company and the union for breach of duty of fair representation and breach of contract, and on other occasions the suit was initiated against the union or the company only. Although many of these decisions challenged the failure of the union to pursue the grievance as the basis for the alleged breach of duty of fair representation, others attacked the quality of the representation of the employee before the arbitral body as the misconduct giving rise to the suit. However, the common thread running through all of these decisions commenced with an observation by the various courts that the absence of a specific limitation period in 29 U.S.C. 185, required the application of the

most closely anaolgous State Statute. This judicial inquiry described as the process of characteriation sometimes impelled the Courts to select the State Limitations period for the filing of Contract actions, and on other occasions resulted in the application of the general limitations period of Torts, put on all occasions Federal and State courts uniformly invoked lengthy limitation periods.

For example, the Supreme Court, in International Union United Auto vs Hoosier Cardinal Corp., 383 U.S. 696, 86 S.Ct. 1107 (1966), promulgated the rationale of characterization for the selection of the appropriate State Statute to which the Circuit and District Courts referred for limitation purposes. The following citations constitute the line of cases upon which the Plaintiff had the right to rely at the time he initiated suit.

The Fourth Circuit, in Howard vs Aluminum,

589 F.2d 771 (1968) and Kennedy vs Wheeling Pittsburgh Steel Corp., 81 BNA-LLRM 2349 (1972), applied a five year State limitation period under the Hoosier rationale. See also Tomison vs Olga Coal Co., 335 F. Supp. 434, SPW Va. (1971), Tippett vs Liggett & Myers Tobacco Co., 316 F.Supp 292, N.D. N.C. (1970). Pittsburgh Steel involved a suit against the union for failure to process the Claimant's grievance and suit against the company for breach of contract. While the Arrington decision rendered by this Court and the case of Fox vs Local 557 (Y-80-5096), which rejected the arbitration limitations period,were decided after the Del Costello case was instituted, the selection of the general limitations period in those cases was based upon the rationale of other authorities preceding litigation in the instant case.

The following cases represent

substantially all of the decisions in other Circuit, District and State courts which similarly support the Plaintiff's contention of good faith reliance on past precedent as required by Chevron.

In Sanderson v. Ford Motor Co., 482 F.2d 1025, 5th Cir. (1973), in a 301 case by an employee against the Union for failure to file his grievance and against the Company for breach of contract, the Court applied the Alabama one year Statute of Limitations. Although the case did not proceed to arbitration, the facts indicate that the employee, company and union at first attempted to resolve the seniority dispute through written compromise. See also Tedford vs Peabody Coal Co., 383 F.Supp. 787 (1974), invoking the Alabama one year Statute of Limitations for Tort actions in a case where an employee whose grievance had proceeded to the third step in arbitration in

litigation against the Union and the Company. See also Engineers vs Mitchell, 190 F.2d 305, 5th Cir. (1955).

In Bruen vs Local 492, 313 F.Supp. 387, D.C. N.J. (1969), it involved a suit by an employee against the Union and the Company arising out of an alleged arbitrary removal of the Plaintiff's name from the seniority lists. The Court applied the six year State Statute of Limitations for Contracts and Torts under the Hoosier rationale. Reversed on other grounds, Bruen vs Local 492, 425 F.2d 190 (1970). See also Falsetti vs Local Union 2026, United Mine Workers Union, 355 F.2d 658 (1966), and Marshall vs Electric Hose & Rubber Co., 68 F.R.D. 287, D.C. Del. (1975).

The First Circuit in De Arroyo vs Sindicato De Trabajadores Packing House, 425 F.2d 281, 1st Cir. (1970) Cert. denied, 91 S.Ct. 117, 121, 863 (1972, 1973), applied the one

year State Statute of Limitations for Torts rather than the longer Statute for Contracts in a suit involving the Union's failure to file a grievance attacking the employee's discharge.

The Court's analysis in the context of the Hoosier rationale provided critical guidelines to which other Circuit and District Courts often relied upon and to which they often referred in their analysis of limitations questions.

On Page 287 of the Opinion, Judge Coffin stated:

> "I think the logic of Hoosier Corp. dictates the adoption of express State Statute of Limitations in the absence of an express Federal Limitations period."
>
> "We detect in Hoosier a distinct preference for the shorter period of limitations where the question of characterization is a close one (where choices between the selection of contract or tort limitation period), and no manifest injustice results from such choice which preference suggests the tort limitations period is most judicious."
>
> "The question becomes whether there

is any express Federal limitations period governing an action against a Union for breach of duty of fair representation."

"Since the Union's breach may be an unfair labor practice, the statutory six month limitation period for such practices, 29 U.S.C. 160(b) could be deemed applicable to an employee's suit against the Union."

"However, since Vaca vs Sypes established Federal Labor policy does not require that the individual suit be preempted simply because the NLRB might also be able to prosecute the union for such conduct, we see no reason why such private litigation be limited by the same period as the NLRB is. By giving the individual employees a longer period than the NLRB's six months, WE ENCOURAGE INITIAL RECOURSE TO THE BOARD WITHOUT PRECLUDING SUBSEQUENT CIVIL SUITS IF THE BOARD REFUSES TO PURSUE THE MATTER FOR THE INDIVIDUAL. Moreover, the individual suit is still analogous to an ordinary Tort action regardless of the Board's concurrent jurisdiction."

The Federal District Court of Maine in Sciaraffa vs Oxford Paper Co., D.C. Maine 310 F.Supp. 891 (1970), held that a discharge case involving 60 women was not barred by the NLRB limitations period of sixty days, since the six

year Statute of Limitations of Maine was applicable. See also International Longshoremen's Assn. vs Sealand Service, D.C. Puerto Rico, 430 F. Supp. 282 (1975), holding ten year limitation period applicable.

Although the ninth Circuit in the case of Fichback vs Moore, Inc., 350 F.2d 935 (1965), held California's three year Statute of Limitations to be applicable by analogy in a 303 case against the union and not the NLRB six month period, the California Supreme Court in 1977 in the case of Lento vs Underground Construction Co., 69 Cal. App. 3rd 933, spoke definitively to the limitations question in a case by an employee against the union, the union's lawyer and the company following an adverse arbitration decision.

Relying upon the Supreme Court's Decision in Hines vs Anchor Motor Freight, 424 U.S. 554, 96 S.Ct. 1048, Dec. 1946 (which also

involved a 301 action filed more than a year after an adverse arbitration).

The California Court held that the one hundred day California arbitration statute (otherwise applicable to awards procured by fraud and corruption) could not be employed to preclude a suit against the employer and the union when it is alleged that the award was the product of dishonest, bad faith representation. There the union has breached the duty of fair representation, the Court opined, and the policy of promoting finality of the arbitration award does not preclude a judicial action by the employee to enforce the bargaining agreement. Since Hines was commenced well after the limitations period for commencement of actions to vacate the award, this suit need not be commenced within the arbitration statute of limitations of one hundred days, but would be governed by the normal statute of limitations

for actions on contract, fraud and deceit.

The Eighth Circuit, in Butler vs International Brotherhood of Teamsters (514 F.2d 442, CA 8 Cir. 1975, 423 U.S. 924,(Cert. denied 1976), decided that the State limitation period of five years is applied under the Hoosier rationale to the case of an employee who was suing the union for breach of duty of fair representation and the company for breach of contract following an adverse arbitral hearing. In this case the Butler Court analyzed the character of the action for limitation purposes citing other Circuit Court decisions which similarly address themselves to the limitations question. De Arroyo vs Sindicato De Trabajadores Packing House, First Circuit; Sanderson vs Ford Motor Co., Fifth Circuit; Abrams vs Carrier Corp., 434 F.2d 1251, 2nd Cir. See also Warren vs IBT, 554 F.2d 334, 8th Cir.(1976), Mikelson vs Wisconsin Bridge Co., D.C.Wisc.354

F.Supp. 444; Tully vs Fred Olsen Motor Service, 27 Wis.2d 476, 134 N.W.2d 393, holding State Limitations period of six years applicable in a 185 action against the Union and Company, and not six month NLRB Statute under 2290 U.S.C. A 160(b). See also St. Louis Typophical Union vs Herrald Co. D.C. M.O. 277 F.Supp. 276, Affd. C.A. 8, 402 F.2d 553; see also Grant vs Mulvihill, 428 F.Supp. 45 (1976), involving action against Company and Union holding Contract Limitation Period applies.

In the case of Bucholtz vs Swift, 62 F.R.D. 581 (1973), a Minnesota District Court similarly held that suit by an employee against his Union and the Company was governed by the Minnesota Statute of Limitations for Contracts or Torts. This election process by the Court impelled the Bucholtz Court to observe that

> "While there is a split of authority in connection with the contract or tort preference, though breach of duty may be an unfair labor practice, the six month

NLRB rule is not controlling."

See also Harmon vs Martin Bros., 227 F. Supp. D.C. Ore. (1964), holding six month NLRB limitation to be inapplicable as a result of which the State Statute of Limitations period was applied. See also Health Beneficial Trust Fund vs Domes Insulation Co., 387 F.Supp. 144 (1975), applying Colorado six year Statute of Limitations to a 1985 case under 29 U.S.C. 185, as not unreasonable or contrary to National Federal Labor Policy.

The Sixth Circuit held, in Smart v. Ellis, 580 F.2d 215, 6th Cir., decided July 1978, 96 S.Ct. 1497 (1979), that the District Court decision in that case, reported in 409 F.Supp. 129, Eastern Dist. Michigan (1976), applying the contract and not the State Arbitration Limitation period was generally correct. See also Glowacki vs Motor Wheel Corp., 67 Mich. App. 241 N.W. 2d 240 (1976); Field vs Local

652, 148 N.W. 2d 552 (1967), holding 20 day Michigan arbitration statute of limitations and Federal Arbitration Statute of Limitations inapplicable to 301 cases. See also International Association of Heat and Frost Insulators and Asbestos Workers Local, 416 F.2d 313 (1969), 6th Cir.

In the Second Circuit Abrams vs Carrier Corp., 434 F.2d 1234 (1970), New York's six year statute of limitations for contracts was applied to a 301 case against the company and the union arising out of the Union's refusal to pursue the employee's grievance. Subsequent to the initiation of the Del Costello case, the Second Circuit in Mitchell vs United Parcel Service, Inc., 624 F.2d 394, 2nd Cir. (1980), rejected the New York State Arbitration limitations period of ninety days, holding that the New York six year Statute of Limitations applied to a 301 suit of an employee against the

union and the company following an unsuccessful arbitration decision. Although there do not appear to be any Federal Circuit cases which apply the short arbitration statute of limitations in 301 cases at the time that the instant case was filed, there are several Federal District Court cases which apparently did invoke the "arbitral limitations period".

The United States District Court for the Northern District of New York, in the case of Barbarino vs Anchor Motor Freight, 94 LRRM 2369 (1976), held that the ninety day New York Arbitration Statute, rather than the general statute of limitations, precluded the Plaintiff's recovery. This Court distinguished the present action from the case of Abrams vs Carrier Corp., supra, on the ground that Abrams did not involve a previous arbitration award.

See also De Lorto vs United Parcel Service, 401 F. Supp. 408 (1975); U.M.W. vs Jones

and Laughlin Steel Corp., 378 F.Supp. 1206; International Brotherhood of Teamsters Local 249 vs Motor Freight Express, Inc., 356 F.Supp. 724, West.Dist.Pa. (1973); Hanna Heating & AC Co., Inc. vs Sheet Metal Workers Local, 378 F.Supp. 1001, S.D. N.Y. (1974); Luncford vs Western Conference of Teamsters, CCH, D.C. 74 Labor cases, Cal. (1971). See also Wallace vs American Telephone & Telegraph Co., 460 F.Supp. 755 (decided April 25, 1978, after Del Costello).

The Barbarino distinction between arbitral award litigation and a suit emanating from failure to pursue a grievance as addressed by Abrams, when viewed prospectively for limitation purposes, did not in any manner foreshadow the result in Mitchell for several reasons.

First, the footnote in Abrams[1] to the

[1]It is again to be emphasized, however, that it does not follow that limitations

effect that the Abrams Court declined to render a comprehensive decision for limitations purposes as stated in the context of choosing between a contract or tort classification, both of which tended to invoke the long statute of limitations. There was no hint or indication by the Abrams Court in their note analysis that the arbitral New York limitations period, or

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[1] (Continued)
period for breach of contract related claims will apply to all suits brought against a Union by a disgruntled employee which are nominally classified as within the fair representation rubric. In each instance the nature of the alleged act of commission or omission on the part of the Defendant Union must be examined to determine Federal characterizations for statute of limitations purposes; we therefore express no opinion as to whether, given allegations other than the Union for refusal to enforce the employee's contract rights, we might adopt the statutory duty characterication of Gray vs International Association of Heat & Frost Insulators, 416 F.2d 313, 6th Cir. The tort characterization of De Arroyo vs Sindicato De Trabajadores Packing House, 425 F.2d 281, 1st Cir. (1970), or some other classification.

any other short statute as being considered. Furthermore, when the Second Circuit decided the Mitchell case they cited Abrams as authority for their rejection of the New York ninety day limitation period. Secondly, the Mitchell Supreme Court selection of New York's ninety day Statute of Limitations, rather than the six year period, was predicated upon a policy favoring expeditious resolution of grievances in order to preserve the arbitral process and the law of the shop from disruptive changes many years later. Hoosier and all other Circuit, District and State authorities were flatly and unforseeably overruled. The Supreme Court, unlike Barbarino, and the few scattered District cases invoking the short arbitral statute made no distinction between the cases involving arbitral decisions and those pertaining to unfiled grievances as the legal justification for the selection of the short limitation

period. Surely the Mitchell court did not intend, nor can the Defendants contend, that a 301 Plaintiff who pursues his case to arbitration is bound by the thirty day Maryland Arbitration Statute, whereas a 301 Plaintiff to whom arbitration is unjustly denied, is foverned by the three year general statute of limitations for contracts or torts. If such an anamolous construction finds no support in Mitchell, the arbitral distinction theory in Barbarino viewed prospectively did not logically portend a sweeping change that is now the law.

Lemon vs Kurtzaman, 411 U.S. 192; 93 S. Ct. 1463 (1973), in addressing the issue of prospective application in another context, observed:

> "Statutory or even Judge-made rules of law are hard facts on which people must rely in making decisions, and in shaping their conduct. This fact of legal life underpins our modern decisions recognizing the Doctrine of Retroactivity."

Consequently, when the Plaintiff initiated suit on March 17, 1978 (approximately seven and one-half months from the decision of the Eastern Conference of July 19, 1977, six and one-half months from the deletions and corrections letter of Arthur Morningstar of August 19, 1977; five and one-half months from unanswered reply to 557 of September 14, 1977, regarding the objections to the decision of the Eastern Conference and the accompanying documents otherwise known as minutes) a clear and overwhelming line of Federal and State authorities in the Fourth Circuit and throughout the Country, all of which were overruled by Mitchell, indicated that he had three years within which to initiate his action.

It is obvious that at that time counsel for both Defendants were similarly persuaded that the Plaintiff's action was not time-barred by any thirty, ninety or one hundred and eighty

day limitation period. It is equally apparent from the face of the Bill of Complaint filed on March 16, 1978, containing a copy of the Eastern Conference decision of July 19, 1977, and the date that suit was instituted on March 16, 1978, that more than six months elapsed. Nevertheless, Local 557, which now raised the sword of counsel fees as the price for the Plaintiff's refusal to voluntarily dismiss his action in the light of Mitchell (See exchange of correspondence between counsel, Exhibit No. 7), Local 557 thought so much of the defense of limitations that they failed to affirmatively plead that defense in their Answer to the Bill of Complaint on April 10, 1978, in contravention of Federal Rule 8(c). Ironically, the Federal decisions interpreting the failure of the Defendant to affirmatively assert the defense of limitations in their Answer seems to insulate them from an attack of waiver by

permitting the limitations question to be raised by a Motion for Summary Judgment as long as failure to comply with the applicable period of limitations is apparent from the face of the Complaint.

Nevertheless, while the Defendant, Anchor, did comply with Federal Rule 8(c) by raising the defense of limitations in their Answer to the Plaintiff's Complaint, neither Defendant seriously or expeditiously raised the question of limitations until the filing of their Motions for Summary Judgment in February of 1981, at a time when the issue of arbitral limitations had already been argued before the Supreme Court. Accordingly, it is only fair to suggest that both Plaintiff and Defendants in the instant case honestly and reasonably relied upon past precedent, which clearly indicated that the Plaintiff had three years within which to initiate this lawsuit.

It is also apparent that when the Plaintiff filed suit on March 16, 1978, the action was timely under every decision rendered in the Fourth Circuit covering fair representation suits as well as under every single precedent cited, which Mitchell overruled. In fact, the Supreme Court previously denied a Writ of Certiorari when the question of arbitral limitations for fair representation suits was raised in the case of Smart vs Ellis Trucking, supra. Until the Supreme Court addressed the question in Mitchell the State arbitration limitations period as a proper Statute was either rejected or not considered in every single decision previously cited. There was no logical or legitimate warning that a State arbitration law would be the appropriate Statute, and for these reasons the good faith reliance test under Chevron is satisfied.

The second standard enunciated in Chevron

requires the Court to weigh the merits or demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation. The prior history of the applicable limitations to 301 cases has been to permit the initiation of suit within a period of three years, as provided by the Maryland Code in Courts and Judicial Proceedings Article 5-101.

In Mitchell, Judge Rehnquist observed:

> It is important to bear in mind the observations made in Steelworkers triology that the grievance machinery under a collective bargaining agreement is at the very heart of a system of industrial self-government ..... the processing machinery is actually a vehicle by which meaning and content are given to the collective bargaining agreement. Although the present case involves a fairly mundane and discreet wrongful discharge complaint, the grievance and arbitration procedure often processes disputes involving interpretation of critical terms in the collective bargaining agreement affecting the entire relationship between company and union. See Humphrey vs

Moore, 375 U.S. 335 (seniority rights of all employees). This system, with its heavy emphasis on grievance arbitration and the law of the shop, easily becomes unworkable if a decision which has given meaning and content to the terms of an agreement, and even affected subsequent modifications of the agreement, would suddenly be called into question as much as six years later."

Clearly, the Mitchell Court was not concerned with the simple discharge of the litigant, but promulgated a new rule, or more appropriately, a national policy that would expedite the trial of 301 cases involving substantial numbers of employees whose rights and duties were governed by the law of the shop in a manner that would insulate the arbitral process from the disruptive effects of radical change many years later.

The Plaintiff's action in the instant case, like Mitchell, involves a fairly mundane and discreet wrongful discharge complaint filed at most seven and one-half months after the arbitral decision of the Eastern Conference of

July 19, 1977. White it is conceivable that a successful conclusion of the Del Costello case may establish a clarification in the decisional precedents pertaining to breach of duty of fair representation, it is obvious that entire classes of employees under the Labor Management Contract will not be affected in their seniority or other rights if this Court permitted Del Costello to be tried. Moreover, the Plaintiff has initiated suit under a Labor Management Contract which has since expired (See Labor Management Contract, 1976-1979), thereby even further limiting the possible impact that a continuation of this litigation may have. Accordingly, non-retrospective application of the thirty day Statute of Limitations will not operate in a manner that would conflict with the purpose for which the new rule was designed. Nor, will it impair the stability in the law that the new rule seeks to preserve.

The third and final standard established in Chevron requires a weighing of the inequity imposed by retroactive application against the prospect of avoiding hardship and injustice by holding that the new rule is prospective. From July 19, 1977, the date of the arbitration decision to March 16, 1978, until the decision in Mitchell on April 20, 1981, the Plaintiff, the courts, including this Court, and even the Defendants despite possible tongue-in-cheek arguments to the contrary in February, 1981, all reasonably relied upon the notion that the three year limitations period was applicable until the Mitchell case, in accordion-like fashion, reduced three years to thirty days. To suggest that the Plaintiff's cause of action should now be equeezed to the point of extinction by the retrospective and mechanical application of a vise-like thirty day rule under a fictitious theory that the law now

announced has always been the law overlooks the fact that the new rule was not designed to abrogate substantive rights of Plaintiffs established by Congress in 301 cases, but was indeed fashioned as national policy to expedite the litigation in a manner that would preserve the integrity of the arbitral process. With reasonable, if not detrimental reliance upon the old rule, the Plaintiff, Del Costello, following receipt of the decision from the Eastern Conference of July 19, 1977, upholding the discharge, received a letter from Morningstar on August 20, 1977, seeking additions, corrections and deletions from the Eastern Conference minutes on or before September 20, 1977, to wh ich the Plaintiff responded, with assistance of counsel, by his letter of September 14, 1977, which was never answered by the Union or by the Eastern Conference. This course of dealings between the Plaintiff and

Morningstar, who was a member of the Eastern Conference in cases in which 557 is not a party, at the very least indicated to the Plaintiff that even if his quest for reinstatement might turn out as an exercise in wishful thinking, there were nevertheless, procedural steps remaining before the arbitral decision became absolutely "final". After the Defendant, Local 557, and the Eastern Conference failed to reply to his letter of September 14, 1977, containing additions, corrections and complaints, Del Costello contacted counsel in December of 1977 and after the appropriate legal research and inquiry into the factual background surrounding the claim, counsel of record was retained on March 9, 1978, and initiated suit on March 16, 1978, entertaining at the time the reasonable belief that the cause of action was not time barred. Thereafter, counsel for all the parties engaged in extensive pre-trial discovery

which has not yet been concluded.

Suffice it to say that it would produce the most substantial inequitable results to hold that Del Costello slept on his rights at a time when he could not have known the time limitation that the law imposed upon him.

Accordingly, the Plaintiff respectfully requests that this Court apply the limitations period enunciated in Mitchell prospectively.

II

ASSUMING ARGUENDO THAT MITCHELL SHOULD BE GIVEN RETROSPECTIVE APPLICATION, WHICH STATUTE OF LIMITATIONS IS APPROPRIATE FOR THE COURT TO APPLY?

If this Court decides that the Mitchell decision operates to apply the Statute of Limitations retrospectively, this Court has the further obligation of determining whether the New Jersey or the Maryland Uniform Arbitration Acts are applicable.

As the Defendants have suggested, the Maryland Law Encyclopedia on Limitations of Actions, page 315, provides:

> "The law of the forum State is generally the one that governs the appropriate Statute of Limitations."

In addition, in the Annotated Code of Maryland, Courts and Judicial Proceedings Article, Section 3-202, the legislature amended the jurisdictional section which previously took jurisdiction over awards rendered in this State. In fact, in Security Construction vs Maietta Tavelino Corp., 25 Md. App 303; 334 A. 2d 133 (1975), the Court of Special Appeals determined that an arbitration award made outside of the State of Maryland (Philadelphia) had to be vacated in the thirty days pursuant to the Maryland Annotated Code, Courts and Judicial Proceedings Article, Sections 3-224.

Since the Plaintiff, Local 557 and Anchor Motor Freight are all located in the State of

Maryland where the action arose, the New Jersey Courts do not have jurisdiction or venue over the party. Therefore, the Maryland Uniform Arbitration or the National Labor Relations Act are the appropriate Statutes to apply, if any.

III

THE STATUTE OF LIMITATIONS IN THE MARYLAND UNIFORM ARBITRATION ACT WAS TOLLED BY THE COURSE OF DEALINGS BETWEEN THE PLAINTIFF AND LOCAL 557 FOLLOWING THE EASTERN CONFERENCE DECISION OF JULY 19, 1977.

Business Agent Arthur Morningstar, who represented the Plaintiff before the Eastern Conference Arbitration Committee on July 19, 1977, according to testimony of Daniel Sandy, company representative (page 15 of his testimony) stated that Morningstar has been a member of that arbitral body since 1970, and has sat as a panel member and decided numerous discharge cases as a member of various panels

composed of an equal number of Company and Union representatives in circumstances where his own Local was not a party to the proceedings. On August 20, 1977, Morningstar wrote the Plaintiff a letter advising him that he had thirty days, or until September 20, 1977, within which to make any additions, deletions or corrections to the conference minutes which presumably constituted the basis by which the July conference panel rendered its decision. The Plaintiff complied with this request by mailing a letter to Duke O'Connor, President of Local 557, with a copy to Arthur Morningstar, in which he attacked the substance as well as the accuracy of the minutes and the award. Neither Local 557 or any representative of the Eastern Conference ever responded to Del Costello's letter of September 14, 1977 (see Del Costello Affidavit). For that reason the award of the Eastern Conference of July 19,

1977, never attained the degree of finality sufficient to commence the running of any limitations period.

In Smart vs Ellis Trucking, 409 F.Supp. 129 (1976), affd. 580 F.2d 215, 6th Cir.(1978), the District Court held that the Michigan Arbitration Statute which is identical to the Maryland Uniform Arbitration Act (because both are based on the Uniform Arbitration Act), would be tolled when the Plaintiff moved for a rehearing. In Smart, supra, the award was made in January, 1971, but did not become final until April, 1971, when the Arbitration panel denied the request for rehearing. The Plaintiff's letter to Morningstar, in his capacity as an Agent of the Eastern Conference, was tantamount to a request for a rehearing because it attacked the use of Ellwood Feldman's testimony which was impermissible under the rules and regulations of the Eastern Conference.

Daniel Sandy, in his deposition (18-50 appended), testified that failure to disclose vital evidence precluded its introduction at the hearing. Moreover, while the Committee hearings are not governed by technical rules of evidence similar to those which exist in Courts of Law, there are nevertheless, basic evidentiary rules with which each side must comply. For example, evidence concerning first hand factual observations of an individual must be introduced by a live witness having personal knowledge, or through his written statement or under Affidavit. An individual witness is not allowed to testify as to what another party saw or heard (Daniel Sandy Deposition, Pages 22, 23, 24).

Documentary evidence, however, such as letters, dock repair orders, pictures, etc., may be fairly introduced (Sandy Deposition, pages 21, 22, 23). At the Eastern Conference

hearing Daniel Sandy told the Committee in his opening statement what he intended to prove concerning the discharge (see Minutes, Exhibit No. 4).

Although the notes of the minutes of the E.C. hearing do not reflect precisely what, if anything, Ellwood Feldman said as a witness for the Company, and Daniel Sandy, at the time of his deposition (page 88), conveniently forgot what his principal witness related to the arbitral body, it is Del Costello's contention (see Del Costello's deposition (pages 65-66, 75-76), that Feldman testified that he was the one who had the "confrontation" with Del Costello, and commenced to relate the details of that confrontation concerning the Del Costello refusal to drive the "safe truck" on the date of his discharge. After hearing the beginning of this testimony at the Eastern Conference, Del Costello promptly told Morningstar

that Feldman was not there the day he was discharged, and that he did not talk to him, after which Morningstar not only failed to object to this excludable hearsay but simply admonished the Plaintiff to be quiet, "Shut up and don't be ignorant like they are" (Del Costello deposition, pages 75, 76). If the false testimony of Feldman was objected to and excluded as it should have been under the evidentiary rules of the Eastern Conference, Anchor would have failed to meet its burden of proof as required by the Conference rules (see Sandy deposition, pages 15, 16), because there was absolutely no testimony up to that point of Del Costello's refusal to drive a truck. While it is true that Anchor two years later alleges that they did comply with the Conference Evidentiary Rules by introducing the Affidavit of John Omeline who stated therein that he was the party to whom Del Costello

communicated his refusal to drive the truck, there was no mention of that fact in any portion of the minutes of the Eastern Conference Decision. Furthermore, Del Costello's contention that Omeline's statement was never introduced is corroborated by 557's answer to question 16 of the Plaintiff's interrogatories signed under Affidavit by Morningstar on behalf of Local 557 on September 6, 1978.

In pertinent part, question 16 asks:

> "On July 19, 1977, at the Eastern Conference Automobile Joint Committee, did the Company, Anchor Motor Freight, the International Brotherhood of Teamsters, etc., and/or Local 557, produce any written or oral statements of persons not present?"
>
> Answer: "No."

Consequently, Morningstar, in his ficuciary capacity as a representative of Del

Costello and as a knowledgeable member of and agent for the Eastern Conference arbitral body was obligated to treat the Del Costello September 14, 1977, letter as a request for a rehearing, and at the very least, Del Costello was entitled to receive correspondence from either Morningstar or the Eastern Conference that his request for a hearing was denied as a condition precedent to the finality of the conference decision and the running of the Statute of Limitations. Since Del Costello never received a reply to his September 14 letter, the limitations proscribed by the Maryland Uniform Limitations Act was tolled until such time as the Eastern Conference formally ruled upon the Plaintiff's request.

If Mitchell is to be construed and applied so as to mandate the initiation of a suit within thirty, ninety or one hundred and eighty days, whichever be the case, from the arbitration

decision of July 19, 1977, in order to preserve the integrity of the arbitral process, the arbitral body, through its authorized agents, are similarly obligated to follow its own rules of procedure by clear unequivocal written notification to the Plaintiff advising him of exactly when their decision was final and binding. To permit Morningstar to tinker with the arbitral procedures and string Del Costello along by creating the impression that the Decision is yet to be corrected, and thereby ignore his duty to seek reconsideration and at the same time permit the Defendants in this case to invoke a short Statute of Limitations on the ground that Del Costello's lawsuit is time barred, operates to convert the defense of limitations into a sword as well as a shield.

Furthermore, a mere request for reconsideration will toll the Statute of Limitations under the Uniform Arbitration Laws until such

time as the arbitrator denies a request for reconsideration. Under the decision rendered in Gas Workers Local No. 380 vs Michigan Consolidated Gas, 503 F. Supp. 155 (1980), the Maryland Uniform Arbitration Act, and for that matter any other limitation period was tolled, and the Statute of Limitations did not begin to run in the instant case by reason of the failure of the Eastern Conference directly, or through its aughorized agent, to provide the Plaintiff with any response. In Tucker v. Owen, 94 F. 2d 49, 4th Cir. (1937), the Fourth Circuit held that a Defendant who negligently or intentionally misleads a Plaintiff by its representation, causing him to delay suing until the statutory bar has fallen, will be estopped from pleading the Statute of Limitations.

IV

THE MARYLAND UNIFORM ARBITRATION ACT IS UNCONSTITUTIONAL BECAUSE IT VIOLATES DUE PROCESS AND IS OTHERWISE UNREASONABLY SHORT

The United States Arbitration Act enables individuals to vacate an award within ninety days. The New York Statute of Limitations similarly provides for a ninety day period. Yet the Maryland Act only provides a thirty day period. (Courts and Judicial Proceedings Article of the Annotated Code of Maryland, Section 3-224). It is well established that a limitation statute is unreasonable if it does not afford full opportunity to sue before the bar takes effect, and that the Legislature does not have the power to cut off an existing remedy entirely since this would amount to a denial of justice. Consequently, it is firmly established that when a new limitation is made to apply to existing rights or causes of actions,

a reasonable time in which such rights may be asserted, or in which suit may be brought on such causes of actions, suit must be allowed before the limitation takes effect, and that a limitation statute is void if the period allowed is unreasonably short.

51 ALR 2d, Section 31, page 615, Atchafalava Land Co. vs F. B. Williams Cypress Co., 258 U.S. 190, 42 S.Ct. 284, 185 U.S. 55, 22 S. Ct. 573; Edwards vs Kearzey, 96 U.S. 595, 24 L.Ed. 793.

While it is clear that Mitchell sanctions the New York ninety day limitation period in 301 cases, it is respectfully suggested that the thirty day limitation period in Maryland is an unreasonably short time bar. This proposition is supported by the concurring opinions in Mitchell which would establish a national six month period of limitations for the filing of 301 actions. The Mitchell

court (page 4379, footnote 2) stated that they declined to consider the six month limitation period because the Respondent filed his claim beyond the six month period and therefore the issue is not before them, and in any event, the Claimant would be barred even if the six month period were the Law. While it would be presumptuous to expect this Court to promulgate a new national policy establishing six month limitations for all 301 actions, it is quite appropriate for the Plaintiff to assert that the thirty day limitation period is unreasonably short. Appeals in the State of Maryland under a variety of rules and regulations provide thirty days within which counsel may appeal from adverse Court and Administrative Decisions in circumstances where counsel has unsuccessfully represented the litigant. In all of these proceedings, including matters under the Maryland Arbitration Act, counsel

for the litigant presumably has been retained and has searched the law and investigated the facts long before the adverse Court or Arbitration Decision, as a result of which the litigant's case requires no more than perfunctory filing of an Appeal by counsel which, in practical terms, involves minutes to hours in order to preserve the rights of the client. However, the 301 action is an entirely different species of litigation. Under the Labor Management Contract and Rules or Procedures of the Eastern Conference and Teamster Constitution, a lawyer is absolutely prohibited from representing a Claiment before the Arbitration Committee of the Eastern Conference. (Union Company Contract, Page 9, Article 3, Section a) The rules of Procedure prohibit any party unassociated with either the Company or the Union, for a period of eighteen months, to represent either the Company or the Union at a

discharge hearing. The rationale of lawyer exclusion was to expedite discharge cases at minimum costs which, of course, expose the arbitral process to the evils of horse trading and deals which many scholars in Labor Law believe rampant in the Teamster arbitral process. See the following Law Review Article:

> 51 Texas Law Review, Page 1170, Duty of Fair Representation, theoretical structure by Julia P. Clark.

For all intents and purposes, the discharged employee is bound to accept his duly appointed business agent as his representative. Consequently, from a legal as well as practical standpoint, the employee must rely upon the business agent to investigate the facts of his case, prepare a defense, and thereafter argue on his behalf at the arbitral hearing. Under these circumstances, it is not unreasonable to expect that more than thirty days may elaps before the discharged employee realizes that his

fiduciary did not represent him fairly under the applicable Court decisions. In the Del Costello case, this skepticism induced the Plaintiff to contact present counsel in September of 1977, after Morningstar refused to assist him with the preparation of the Morningstar deletion and correction letter of August 20, 1977. Even on that late date it would have been manifestly unfair for the Law to impose upon present counsel the Hobson's Choice of running the risk of initiating a frivolous lawsuit if he did file suit, or running the risk of being time barred by the thirty day statute of limitations if he declined to file suit until an investigation into the merits of the claim indicated that the employee had a case. Furthermore, present counsel's choice was generally based upon the aforementioned authorities calling for a three year limitation period, but was precluded from initiating suit on an

earlier date because of the complexity of the issues and facts that the Del Costello determination raised. Before undertaking this litigation he also was required to make inquiry into the Federal Substantive Law, the Union Management Contract, the Local Rider, Customs and Practices at Anchor and Local 557, Shop Law, and interviews with numerous witnesses conversant with these practices and, more particularly, with the facts of the case, all of which took appreciably more than thirty days, or for that matter ninety days.

Finally, it is respectfully suggested that the application of the Maryland thirty day period to the Del Costello claim would have precluded suit on August 20, 1977, on the very day that he received the deletions and corrections letter from Arthur Morningstar. Consequently, the thirty day time bar would operate to vitiate the Claimant's procedural

rights to reconsideration but, in addition, would unreasonably abort Del Costello's substantive rights under Section 185. In August, 1977, no Federal or State construction of the facts and circumstances would rationally demonstrate that Del Costello had a stale claim.

Respectfully submitted,

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III

THE SIX MONTH LIMITATIONS PERIOD OF THE NATIONAL LABOR RELATIONS ACT SHOULD BE ADOPTED BY THIS CIRCUIT.

Del Costello contends that the six month limitations period delineated in the National Labor Relations Act, Title 29 U.S.C. §160 (b), is the appropriate limitations period applicable to both the company and the union. Since the court below found that there was sufficient evidence in the record to indicate that the limitations period did not begin to run until December of 1977 (App. 18, 111; Court's Opinion and Affidavit), the present action was filed well within the six month period and is not time-barred.

At the outset, it must be stated that Justice Rehnquist, in United Parcel Service v. Mitchell, 101 S.Ct. 1559, 1562, 1563, observed in footnote 2 of that decision:

> "The AFL-CIO has filed a brief arguing that in cases such as the present one, the court should apply the six month limitations period of 10 (b) of the National Labor Relations Act, Title 29 U.S.C., §160 (b). We decline to consider this argument, since it was not raised here or below."

More importantly, Justice Stewart, author of Hoosier Cardinal, supra, in his concurring opinion in Mitchell, together with other members of the Supreme Court, argued persuasively for a national limitations period of six months in all cases where the union and the company are joined. As a matter of fact, five of the nine justices who decided the Mitchell case at one time or another favored a federally created uniform limitations period. (See Hoosier - Cardinal, dissenting opinion, White, J., 383 U.S. 709, and United Parcel Service v. Mitchell, supra, concurring opinion, Stewart, J., Stevens, J., and Blackmun, J.)

The primary reason why this Court should

adopt the six month limitations period is that a breach of duty of fair representation is also an unfair labor practice under the National Labor Relations Act, to which Congress has affixed a limitations period of six months, which can not be shortened by applying a thirty day Maryland arbitral statute to the concurrent breach of contract action. See McAllister v. Magnolia Petroleum Co., 357 U.S. 221 (1957), and Mobil Oil Corp. v. Higginbotham, 436 U.S. 618 (1978). Significantly, both the Supreme Court, as well as the Fourth Circuit, have held that a breach of duty of fair representation is an unfair labor practice. See Justice White's opinion in Vaca v. Sipes and Newport News Shipping Co., NLRB 631 F.2d 263 (1981).

Faced with a similar problem involving two interrelated causes of action calling for the application of two limitations periods, the first, under the doctrine of unseaworthiness,

involving a state limitations period under the Jones Act, the Supreme Court, in McAllister v. Magnolia Petroleum Co., supra, held that:

> "An action for unseaworthiness is combined with an action under the Jones Act, and therefore a court can not apply a shorter statute of limitations than Congress has prescribed for the latter. We think this is so whether the action is raised at law or admiralty in the state or the federal courts."

The McAllister court thereafter applied the longer federal limitations period of the Jones Act to both causes of action.

Fulfillment of the Supreme Court's policy of rapid resolution of labor disputes could be enhanced by the adoption of the six month period of the NLRA in the Fourth Circuit because the State of Virginia does not have a time limitation in his arbitral statute. (See Virginia Annotated Code, 8-01-577, 8-01-581; 1981 ed.) As a result, courts in Virginia, under the present law, would be obligated to

adopt either the tort/contract statute, neither of which provides rapid resolution of labor disputes because they call for time limitations of two and three years, respectively. (See Virginia Annotated Code, 8-01-243 and 8-01-246; 1981 ed.)

Similarly, West Virginia also fails to provide an arbitral time limitations period. (See West Virginia Annotated Code, 55-10-4 through 55-10-6) A West Virginia 301 litigant would also be bound by the long contract or tort statute, which provides several years within which an action may be instituted. (See West Virginia Annotated Code, 55-2-12)

The State of South Carolina has expressly declared that their arbitration statute is not applicable to labor disputes. (South Caroline Annotated Code, 15-48-10 (2) 1980 ed.) This state provides the analogous time limitation of six years for contracts and seven years

for most tort actions. (See South Carolina Code, 1980, §153.3.550)

However, the Ninth Carolina arbitral statute provides for a ninety day period within which to vacate an award. (See General Statutes for North Carolina, 1.578-13, 1977 Cum. Supp.)

As a consequence, the time periods in the Fourth Circuit range from thirty days, as in the State of Maryland, to as much as six to ten years in other states in this circuit, which hardly promotes rapid resolution of labor disputes. Furthermore, strict adherence to the lower courts' acceptance of the Barbarino distinction calling for the application of contract/tort statutes in all non-arbitral cases and the thirty day statute in arbitral cases not only raises the spectre of chaos, but is contrary to the Supreme Court's decision in Vaca v. Sipes, supra, holding that a breach of

duty of fair representation occurs either when a grievance is perfunctorily processed or a meritorious grievance is illegally or improperly ignored. Adoption of this arbitral distinction leads inexorably to unjustly punishing the employee who pursued his grievance through the arbitral process, while at the same time rewarding the employee whose grievance was not arbitrated by the mechanical applications of rules in defiance of the very policy that the Mitchell court devised to govern the resolution of labor disputes within the arbitral process. More importantly, an individual court-bound breach of duty suit, whether arbitrated or not, is also an unfair labor practice, to which the employee has recourse through the NLRB, and for that reason both remedies should be treated alike for limitations purposes by applying the NLRA six month statute.

Moreover, the imposition of the six month

period would bring to this area of law within the Fourth Circuit the desired uniformity amongst the states and between the litigants.

It is respectfully suggested, as Justice Stewart opined in United Parcel Service v. Mitchell, 101 S.Ct. 1568, that:

> "In a 10 (b) of the NLRA, Congress established a limitations period attuned to what it viewed as the proper balance between the national interest in stable bargaining relationships and finality of private settlements, and an employee's interest in setting aside what what he views as an unjust settlement under the collective bargaining system. This is precisely the balance at issue in this case. The employee's interest in setting aside the final and binding determination of a grievance through the method established by collective bargaining agreements unquestionably implicates those essential processes that federal labor law is chiefly designed to promote -- the formation of the agreement and the private settlement of disputes under it. Accordingly, the need for uniformity among procedures filed for similar claims, as well as the clear congressional indication of proper balance between the interest at stake, counsel the adoption of 10(b) of the NLRA as the

as the appropriate limitations period for law suits such as this."

III

THE SIX MONTH LIMITATIONS PERIOD CONTAINED IN THE LABOR MANAGEMENT RELATIONS ACT OF 1947, AS AMENDED, 29 U.S.C.§610(b) CANNOT PROPERLY BE APPLIED TO THIS ACTION

The plaintiff has sought to avoid the consequences of his inaction by urging this court to apply the six month limitation set forth in Section 10(b) of the Labor Management Relations Act of 1947, as amended, (LMRA) 29 U.S.C. §160(b). In so doing, he points out that the Supreme Court, in Mitchell, did not decide the question of whether or not the §10(b) limitations period is applicable to an action filed under §301. Despite this admission, the plaintiff also relies on Mitchell as authority supporting the application of that six month statute of limitations. This anomalous position is unsupportable. As the plaintiff's citations to the minority opinions in Mitchell indicate, this alternative was rejected by the majority of the Court.

> Given the choices present here, and the undesirability of the results of the grievance and arbitral process being suspended in limbo for long periods, we think the District Court was correct when it chose the 90-day period imposed by New York for the bringing of an action to vacate an arbitration award.

451 U.S. at 64.

The holding in Mitchell is clear; in accordance with the principles laid down in Hoosier Cardinal Corp., supra, and myriad other §301 actions, a state statute of limitations is to be applied to actions such as the present one.[15] Moreover, in the forty-two states,

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[15] Section 10(b) states that the six month limitation period contained therein only applies to the filing of a charge with the National Labor Relations Board, not to the filing of any implied statutory cause of action. "Congress could not have intended for the §10(b) statute of limitations to apply to suits as the present one." Suwanchai v. I.B.E.W., Local 1973, supra. See also, Local 1020 v. FMC Corp., 658 F.2d 1285, 1289, n. 6 (9th Cir. 1981); Davidson v. Roadway Express, Inc., 650 F.2d 902, 904, n. 2 (7th Cir. 1981).

including Maryland, which enjoy the presence of a law governing the vacation of arbitral awards with an accompanying statute of limitations, Mitchell provides that this limitation is to be applied to the analogous action under Section 301, where the federal litigation has been preceded by arbitration or its equivalent. Thus, the Supreme Court properly left it to either the state legislatures to adopt a statute of limitations for actions to vacate arbitration awards where one is absent or the United States Congress to adopt a uniform applicable statute of limitations, if uniformity is deemed necessary.

Consistent with this precedent, it would be inappropriate for this appellate court to order the adoption of a uniform limitations period of six months to actions filed pursuant to §301. Such bold conduct would constitute judicial legislation and usurpation of a

function best left to those states which compose this Circuit, or to Congress. The non-uniformity of state limitations periods was forseen by the Mitchell court, 451 U.S. at 63, n. 5, 64. This lack of uniformity has been held to be inoffensive to the national labor policy.

> (A)ctions brought to enforce an arbitral award are separate from the arbitration process itself and only come into play after the arbitration has terminated. Thus, whatever need may exist for national uniformity regarding the use of the arbitration process for the private settlement of labor disputes, the same considerations do not require similar uniformity when the judiciary is called upon to enforce an arbitral award.

Service Employees International Union, Local No. 36 v. Office Center Services, Inc., supra, 109 LRRM at 2556.

Fair representation actions are not the only federal actions for which non-uniform state limitations are utilized. See e.g.,

Johnson v. Railway Express Agency, supra, 421 U.S. at 462 (Civil Rights Act of 1866); Cope v. Anderson, supra, 331 U.S. at 463 (National Bank Act); O'Sullivan v. Felix, 233 U.S. 318, 322 (1914) (Civil Rights Act of 1871); Chattanooga Foundry v. Atlanta, 203 U.S. 390, 397 (1906) (Sherman Act); Campbell v. City of Haverhill, 155 U.S. 610 (1895) (Patent Act). In remaining silent on the limitations period of §301, it cannot be inferred that Congress "did so in the expectation that the courts would invent one." Auto Workers v. Hoosier Cardinal Corp., supra, 383 U.S. at 703. The plaintiff, by requesting the application of §10(b)'s limitation period to this case, seeks the same relief that was denied in Hoosier Cardinal Corp. No developments in the ensuing years support reversal of that ruling.

The decision of the Supreme Court to apply a state statute of limitations to §301

actions, followed by the district court below, rationally furthers the public policy of encouraging the rapid resolution of labor disputes. At the same time, it in no way affects an aggreved party's right to seek relief from what it views as an unfair labor practice before the National Labor Relations Board. Well before this action arose, it was settled law that an action pursuant to 29 U.S.C. §185 and an unfair labor practice charge before the NLRB were separate and distinct. See, e.g., Hines v. Anchor Motor Freight, Inc., supra. Although the facts to be developed before each forum might be identical, the commencement of an action under one of the two provisions neither precluded nor compelled the simultaneous prosecution of an action under the other. The fact that inconsistent results might ensue also did not affect the application of this

judicial rule.[16] Accordingly, the district court's decision to apply Maryland's thirty day limitations period to bar the prosecution of this action should be affirmed.

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16 The cases suggested by the plaintiff in support of his position that the six month statute of limitations be applied to this case are inapposite:

McAllister v. Magnolia Petroleum Co., 357 U.S. 221 (1958), involved actions under the Jones Act for negligence and under state law for unseaworthiness. The court found that both actions would have to be tried together and were thus so completely intertwined that, in order to further the purposes of the federal act, its statute of limitations would also be applied to the state action.

Mobil Oil Corp. v. Higginbotham, 436 U.S. 618 (1978), does not involve the application of statutes of limitation. In this case the court merely limited the plaintiff's right to recover damages under general maritime law to those available under the Death on the High Seas Act.

In Newport News Shipbuilding & Dry Dock Co. v. N.L.R.B., 631 F.2d 263 (4th Cir. 1980), the court specifically stated that a plaintiff need not file his unfair labor practice charge in the same action as his 301 claims.